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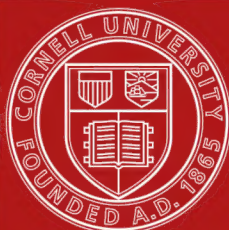
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**A Treatise on the law and practice of re**



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A TREATISE  
ON THE  
Law and Practice of  
Receivers

Being an Analysis of and Commentaries on the Usages  
and Rules of Equity Pertaining to Receivers as  
Established and Applied by the Courts of  
the United States and Great Britain; in-  
cluding Practice, Procedure, Pleadings  
and Forms in Receivership Cases  
with a carefully prepared Chap-  
ter on "The Trading with  
the Enemy Act" as it  
relates to Alien Prop-  
erty Custodians

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*VOLUME II*

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By <sup>wing</sup>  
RALPH E. CLARK  
Of the Cincinnati Bar

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CINCINNATI  
THE W. H. ANDERSON COMPANY  
1913

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## CHAPTER XXXII

### JUDICATURE, JUDICIARY AND PROCEDURE ACTS AS AFFECTING RECEIVERSHIPS

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#### UNITED STATES JUDICIAL CODES

- § 889. History and Comment of United States Judicial Codes.  
The constitution of the United States provides in art. III,

sec. 1, as follows: "The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish."<sup>1</sup>

Acting by the authority and by the power thus granted, Congress has from time to time passed various judiciary acts or "judicial codes" establishing certain United States courts inferior to the Supreme Court of the United States and also set forth the jurisdiction, powers, duties, etc., of such courts and to a certain extent provided for their practice and procedure.

The practice and procedure in the United States Supreme Court is provided for by the rules of the supreme court as formulated and promulgated by the supreme court itself from time to time.<sup>2</sup> The equity practice of the supreme court and of the United States courts inferior to the supreme court is provided for and determined by the rules of equity practice as laid down and promulgated by the supreme court.<sup>3</sup>

Each United States court inferior to the United States Supreme Court and in fact almost all state courts formulate and promulgate their own rules of court.<sup>4</sup>

The rules of the supreme court and rules of equity practice promulgated by the supreme court must be in conformity with the constitution of the United States.

All rules of court of the United States courts inferior to the Supreme Court of the United States must be in conformity with the constitution of the United States and also in conformity with the United States judicial codes as passed by congress from time to time.

We print below in full such parts of the United States Judicial Code (1911) as directly affect receiverships.

<sup>1</sup> See comment in *Martin v. Hunter's Lessee* (1816), 1 Wheat. 306, at 328, 4 L. ed. 97, at 103.

<sup>2</sup> See ch. XXXIII, *infra*.

<sup>3</sup> See ch. XXXIV, *infra*.

<sup>4</sup> See ch. XXXIII, *infra*.

**§ 890. United States Judicial Code of 1911<sup>5</sup> as Affecting Receiverships.** We have selected those sections of the last judicial code of the United States which are peculiarly applicable to receivers and inserted them in the following paragraphs. We have done this for ready reference and also to show how some usages and rules of equity as laid down by a long line of rulings have been somewhat altered and how other rules and usages have been crystallized and made certain by legislative enactment.

**AUTHORITY OF RECEIVER OF PROPERTY LYING IN DIFFERENT STATES.<sup>6</sup> SEC. 56.** Where in any suit in which a receiver shall be appointed the land or other property of a fixed character, the subject of the suit, lies within different states of the same judicial circuit, the receiver so appointed shall, upon giving bond as required by the court, immediately be vested with full jurisdiction and control over all the property, the subject of the suit, lying or being within such circuit, subject, however, to the disapproval of such order, within thirty days thereafter, by the circuit court of appeals for such circuit, or by a circuit judge thereof, after reasonable notice to adverse parties and an opportunity to be heard upon the motion for such disapproval; and subject, also, to the filing and entering in the district court for each district of the circuit in which any portion of the property may lie or be, within ten days thereafter, of a duly certified copy of the bill and of the order of appointment. The disapproval of such appointment within such thirty days or the failure to file such certified copy of the bill and order of appointment within ten days, as herein required, shall divest such receiver of jurisdiction over all such property except that portion thereof lying or being within the state in which the suit is brought. In any case coming within the provisions of this section, in which a receiver shall be appointed, process may issue and be executed within any district of the circuit in the same manner and to the same extent as if the property were wholly within

<sup>5</sup> Judicial Code of United States (1911); Act of March 3, 1911; c. 231, 36 Stat. at L. 1087; United States Compiled Statutes (1916), sec. 968, et seq.; see Hopkins' Judicial Code Annotated.

<sup>6</sup> Judicial Code of United States (1911), par. 56; Act of March 3, 1911, c. 231, par. 56, 36 Stat. at L. 1102; United States Compiled Statutes (1916), par. 1038.



the same district; but orders affecting such property shall be entered of record in each district in which the property affected may lie or be.

ABSENT DEFENDANTS IN SUITS TO ENFORCE LIENS, CLEAR TITLES, ETC.<sup>7</sup> SEC. 57. When in any suit commenced in any district court of the United States to enforce any legal or equitable lien upon or claim to, or to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought, one or more of the defendants therein shall not be an inhabitant of or found within the said district, or shall not voluntarily appear there-to, it shall be lawful for the court to make an order directing such absent defendant or defendants to appear, plead, answer, or demur by a day certain to be designated, which order shall be served on such absent defendant or defendants, if practicable, wherever found, and also upon the person or persons in possession or charge of said property, if any there be; or where such personal service upon such absent defendant or defendants is not practicable, such order shall be published in such manner as the court may direct, not less than once a week for six consecutive weeks. In such case such absent defendant shall not appear, plead, answer, or demur within the time so limited, or within some further time, to be allowed by the court, in its discretion, and upon proof of the service or publication of said order and of the performance of the directions contained in the same, it shall be lawful for the court to entertain jurisdiction, and proceed to the hearing and adjudication of such suit in the same manner as if such absent defendant had been served with process within the said district; but said adjudication shall, as regards said absent defendant or defendants without appearance, affect only the property which shall have been the subject of the suit and under the jurisdiction of the court therein, within such district; and when a part of the said real or personal property against which such proceedings shall be taken shall be within another district, but within the same state, such suit may be brought in either district of said state; *Provided, however*, that any defendant or defendants not actually personally notified as above provided may at any time within one year after final judgment in any suit

<sup>7</sup> Judicial Code of United States, United States Compiled Statutes par. 57; Act of March 3, 1911, c. (1916), sec. 1039. 231, par. 57, 36 Stat. at L. 1102;

mentioned in this section, enter his appearance in said suit in said district court, and thereupon the said court shall make an order setting aside the judgment therein and permitting said defendant or defendants to plead therein on payment by him or them of such costs as the court shall deem just; and thereupon said suit shall be proceeded with to final judgment according to law.

RECEIVERS TO MANAGE PROPERTY ACCORDING TO STATE LAWS.<sup>8</sup>

SEC. 65. Whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property according to the requirements of the valid laws of the state in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall willfully violate any provision of this section shall be fined not more than three thousand dollars, or imprisoned not more than one year, or both.

SUITS AGAINST RECEIVER.<sup>9</sup> SEC. 66. Every receiver or manager of any property appointed by any court of the United States may be sued in respect to any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed, so far as the same may be necessary to the ends of justice.

RELATIONSHIP DISQUALIFIES OFFICIALS.<sup>10</sup> SEC. 67. "No person shall be appointed to or employed in any office or duty in any court who is related by affinity or consanguinity within the degree of first cousin to the judge of said court: Provided, that no such person at present holding a position or employment in a circuit court shall be debarred from similar appointment or

<sup>8</sup> Judicial Code of United States (1911), par. 65; Act of March 3, 1911, c. 231, par. 65, 36 Stat. at L. 1104; United States Compiled Statutes (1916), sec. 1047.

<sup>9</sup> Judicial Code of United States (1911), par. 66; Act of March 3, 1911, c. 231, par. 66, 36 Stat. at L.

1104; United States Compiled Statutes (1916), sec. 1048.

<sup>10</sup> Judicial Code of United States (1911), par. 67 amended; Act of March 3, 1911, c. 231, par. 67, 36 Stat. at L. 1106; amended December 21, 1911, 37 United States Stat. at L. 46; United States Compiled Statutes (1916), par. 1049.

employment in the district court succeeding to such circuit court jurisdiction."

**RESTRICTION ON APPOINTMENT OF RECEIVERS, ETC.<sup>11</sup> SEC. 68.** No clerk of a district court of the United States or his deputy shall be appointed a receiver or master in any case, except where the judge of said court shall determine that special reasons exist therefor, to be assigned in the order of appointment.

**APPEALS IN PROCEEDINGS FOR INJUNCTIONS AND RECEIVERS.<sup>12</sup> SEC. 129.** Where upon a hearing in equity in a district court, or by a judge thereof in vacation, an injunction shall be granted, continued, refused, or dissolved by an interlocutory order or decree, or an application to dissolve an injunction shall be refused, or an interlocutory order or decree shall be made appointing a receiver, an appeal may be taken from such interlocutory order or decree granting, continuing, refusing, dissolving, or refusing to dissolve an injunction, or appointing a receiver, to the circuit court of appeals, notwithstanding an appeal in such case might, upon final decree under the statutes regulating the same, be taken directly to the supreme court: *Provided*, that the appeal must be taken within thirty days from the entry of such order or decree, and it shall take precedence in the appellate court; and the proceedings in other respects in the court below shall not be stayed unless otherwise ordered by that court, or the appellate court, or a judge thereof during the pendency of such appeal: *Provided, however*, that the court below may, in its discretion, require as a condition of the appeal an additional bond.

**APPELLATE AND SUPERVISORY JURISDICTION UNDER THE BANKRUPT ACT. SEC. 130.** The circuit courts of appeals shall have the appellate and supervisory jurisdiction conferred upon them by the act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July first, eighteen hundred and ninety-eight, and all laws amendatory thereof, and shall exercise the same in the manner therein prescribed.

<sup>11</sup> Judicial Code of United States (1911), par. 68; Act of March 3, 1911, c. 231, par. 68, 36 Stat. at L. 1105; United States Compiled Statutes (1916), sec. 1050.

<sup>12</sup> Judicial Code of United States (1911), par. 129; Act of March 3, 1911, c. 231, par. 129, 36 Stat. at L. 1134; United States Compiled Statutes (1916), sec. 1121.

**APPELLATE JURISDICTION UNDER THE BANKRUPTCY ACT.**<sup>12a</sup>  
**SEC. 252.** The Supreme Court of the United States is hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings, from the courts of bankruptcy, from which it has appellate jurisdiction in other cases; and shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

An appeal may be taken to the Supreme Court of the United States from any final decision of a court of appeals allowing or rejecting a claim under the laws relating to bankruptcy, under such rules and within such time as may be prescribed by said supreme court, in the following cases and no other:

*First.* Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a state to the Supreme Court of the United States; or

*Second.* Where some justice of the supreme court shall certify that in his opinion the determination of the question involved in the allowance or rejection of such claim is essential to a uniform construction of the laws relating to bankruptcy throughout the United States.

Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof, and may issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

#### ENGLISH JUDICATURE ACTS

**§ 891. History and Comment on English Judicature Acts.**  
 Just preceding in point of time the celebrated English Judicature Act of Parliament of 1873, we find the following acts of Parliament regulating the procedure of the English courts of law and courts of equity respectively.

The Act of Parliament of June 30, 1852,<sup>13</sup> was "An Act to amend the Process, Practice and Mode of Pleading in the Superior Courts of Common Law at Westminster and in the Superior Courts of the Counties Palatine of Lancaster and Durham."

<sup>12a</sup> 36 Stat. at L. 1159; United States Compiled Statutes (1916), sec. 1229; 5 Fed. Nat. Anno, p. 919.  
<sup>13</sup> 15 and 16 Vict., ch. 76.

This act, as its title indicates, applied only to common law courts.

The Act of Parliament of August 28, 1860,<sup>14</sup> was "An Act to enable the Lord Chancellor and Judges of the Court of Chancery to carry into effect the recommendations and suggestions of the Chancery Evidence Commissioners by general rules and orders of the Court." This act, as its first paragraph indicates, was thought necessary because "Doubts have been entertained whether effect can be given to the recommendations and suggestions of the said reports by general orders of the court without the authority of parliament."<sup>15</sup> In other words, parliament did not wish to make rules of procedure for the courts of chancery, believing that such rules of procedure should be made by the chancery courts themselves or commissioners appointed for that purpose. Yet when such commissioners were appointed and made such rules, their action was legalized by this act of parliament.

The English Judicature Act of 1873 took the place of these acts just mentioned, and consolidated the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy, and constituted them under and subject to the provisions of the judicature act, one Supreme Court of Judicature in England styled later (Judicature Officers' Act of 1879) the Royal Courts of Justice.

The Judicature Act of 1873 and its subsequent amendments<sup>16</sup> does not directly lay down rules of procedure; these are still left to a "Committee on Rules." This rules committee makes orders and rules of practice which are applicable to legal and equitable actions.<sup>17</sup>

<sup>14</sup> 23 and 24 Vict., ch. 128.

<sup>15</sup> 23 and 24 Vict., ch. 128, introductory paragraph.

<sup>16</sup> See Supreme Court of Judica-

ture Procedure Act (1894), ch. 16, sec. 4; 57 and 58 Vict., ch. 16, sec. 4.

<sup>17</sup> See ch. XXXIII, "Rules of English Supreme Court of Judicature," sec. 909, et seq.

The Judicature Act of 1873 itself provides rather specifically by what courts and under what circumstances a receiver may be appointed as indicated in the provisions quoted below.

**§ 892. English Judicature Act of 1873 as Affecting Receiver-ships.<sup>18</sup>**

(8) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

**STATE CHANCERY ACTS**

**§ 893. History and Comment on State Chancery Acts.** Those states which have adopted civil codes of procedure regulate their law and equity courts and their practice and procedure by the so-called civil codes. Other states which have so-called chancery courts and hold to the old chancery forms frequently have chancery acts prescribing more or less rigidly chancery procedure. But this matter is generally governed by equity rules adopted by the chancery or equity courts themselves.

In the mixed practice states, for instance Illinois, we frequently find chancery rules of practice laid down by the legislature. These rules generally prescribe modes of procedure<sup>19</sup> and provide either specifically or by implication that

<sup>18</sup> 36 and 37 Vict., ch. 66 (8).

<sup>19</sup> Illinois Statutes Annotated, J. & A. Vol. I, p. 723, par. 881, sec. 1.

“where no provision is made by this act, practice shall be according to the general usage and practice of courts of equity.”<sup>20</sup>

We refer below to a few state chancery acts. We have not reproduced the acts in full because of their length.

**§ 894. Alabama Chancery Acts—Comment and Citation.** The Code of Alabama provides specifically a code of procedure for chancery courts (Code of Alabama, 1907, Vol. 11, ch. 61, “Chancery Courts,” secs. 3042 to 3228). In addition to the various provisions of the chancery act just referred to which apply indirectly to receivership, we have a chapter of the Code of Alabama devoted to receivers, being a sample of the so-called “general receivership statutes” found in most states (ch. 131, secs. 5726-5731).

**§ 895. Delaware Chancery Acts—Comment and Citation.** The chancellors of Delaware have from time to time promulgated their own rules of equity, but these rules have not been directly made legislative acts. However, the Delaware legislature of March 16, 1915, passed “An Act authorizing the Chancellor of the State of Delaware and the Superior Court of the said State to codify and have printed the Rules of the several Courts.”<sup>21</sup>

The chancellors of Delaware have from time to time formulated and promulgated rules for the Court of Chancery of Delaware, directly affecting receivership. These were dated October 1, 1913, Charles M. Curtis, chancellor. These rules we consider of such value that we have reproduced them elsewhere.<sup>22</sup>

**§ 896. Florida Chancery Acts—Comment and Citation.** Practice in chancery is provided for in Florida rather specific-

<sup>20</sup> Illinois Statutes Annotated, J. & A. Vol. I, p. 723, par. 881, sec. 1.

<sup>22</sup> See rules reproduced under ch. XXXIV, sec. 967, *infra*.

<sup>21</sup> Laws of Delaware, 28 (1915), ch. 233.

ally by the laws of Florida,<sup>23</sup> art. 5; Practice in Chancery, sec. 1877 (1425). What Practice to Prevail, sec. 1878 (1426); Service of Notice.

Under the practice of the Courts of Equity of Florida as laid down by the statute quoted below, receivers are appointed.<sup>24</sup>

## ARTICLE 5.

### PRACTICE IN CHANCERY.

SEC.

1877. What practice to prevail.

SEC.

1878. Service of notices.

SEC. 1877. (1425) WHAT PRACTICE TO PREVAIL. In the absence of provisions of the law or rules of practice of this State, the rules of practice in the courts of equity of the United States, as prescribed by the Supreme Court thereof, under the Act of Congress of the 8th day of May, one thousand seven hundred and ninety-two, shall be rules for the practice of the courts of this State when exercising equity jurisdiction; and when the rules of practice so directed by the Supreme Court do not apply, the practice of the courts shall be regulated by the practice of the high court of chancery of England. (Nov. 7, 1828, § 32.)

SEC. 1878. (1426) SERVICE OF NOTICES. All notices in chancery to be served shall be served upon the opposite party or his solicitor, if residing within twenty miles of the courthouse in the proper county, personally, or if residing at a greater distance, by mail. Proof of the mailing shall be required by affidavit or certificate from the person mailing. (Ch. 77, Jan. 6, 1847, § 2.)

**§ 897. Hawaii Chancery Procedure—Comment and Citation.** Hawaii has a code of civil procedure substantially doing away with the distinction in form between suits at law and actions in equity. Hawaii Civil Code provides very generally for equity jurisdiction and procedure. See Revised Laws of Hawaii (1905), ch. 121, secs. 1833 et seq. In so doing, receiverships are indirectly provided for.

<sup>23</sup> Florida Compiled Laws Annotated (1914), secs. 1877 and 1878.

<sup>24</sup> See Florida Compiled Laws Annotated (1914), sec. 1877 (1425), notes 57 et seq.



**§ 898. Illinois Chancery Acts—Comment and Citation.**

Illinois has the so-called mixed practice of law and equity, that is, both forms of pleadings are kept distinct although one judge administers both common law and equitable remedies. The Illinois Chancery Act is found in Illinois Statutes, annotated, J. & A., Vol. 1, p. 723, ch. 22, "Chancery," par. 881 et seq.

A very important provision was added June 23, 1913, to the Illinois chancery procedure, as laid down by the Illinois legislature as follows:

**RECEIVERS.<sup>25</sup>**

An Act in relation to suits and proceedings against receivers appointed by any court of the State of Illinois.

Approved and in force June 23, 1913, L. 1913, p. 254.

SEC. 932 (1). SUITS AGAINST RECEIVERS WITHOUT LEAVE OF COURT—CONTROL OF APPOINTING COURT. SEC. 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly:* That every receiver or manager of any property appointed by any court of the State of Illinois may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such receiver or manager was appointed, so far as the same shall be necessary to the ends of justice.

SEC. 932 (2). EMERGENCY. SEC. 2. *Whereas,* An emergency exists, therefore this Act shall be in full force and effect from and after its passage.

**§ 899. Maryland Chancery Acts—Comment and Citation.**

The Code of Maryland provides specifically for chancery practice (Code of Maryland, art. XVI, "Chancery"). Section 201 of said chancery act provides for the passing of an order with regard to the possession of property pendente lite and sec. 230 provides specifically for a receiver's bond. In sec. 83 of said

<sup>25</sup> Callaghan's Illinois Laws (1913-1916), p. 146.

act provision is made for testimony in the matter of a hearing on a motion for a receiver.

In addition to the provisions found in the Maryland "Chancery Act" touching on receiverships, other statutes are found governing receivers of corporations, etc.<sup>26</sup>

**§ 900. Massachusetts Chancery Acts—Comment and Citation.** Massachusetts, as far as concerns procedure, is in a sense a mixed state, yet has a mode of procedure more modern than the mixed states and not exactly like a true "code state."

The statutes of Massachusetts provide specifically for the equity jurisdiction and procedure of the supreme judicial court and the superior court.<sup>27</sup>

**§ 901. Michigan Chancery Acts—Comment and Citation.** Michigan, another mixed practice state, has established courts of chancery but abolished chancellors.<sup>28</sup> The Supreme Court of Michigan may establish rules of practice for the courts of chancery.<sup>29</sup> The power of the circuit (trial) court to appoint receivers is specifically provided for in the two sections printed below.

In sec. 12612<sup>30</sup> the time when the several circuit courts, superior courts and circuit courts in chancery may hear applications for and motions for the dissolution of injunctions, application for appointment of receivers, and the discharge thereof is specifically provided for.

The appointment of receivers by the circuit or lower chancery courts is specifically provided for as follows:

SEC. 11963. APPOINTMENT OF RECEIVERS.<sup>31</sup> SEC. 34. Each circuit court shall have power to appoint receivers in all cases pending in chancery, when such appointment is allowed by law, as well in vacation, as during the sessions of the court.

<sup>26</sup> See ch. XXXV, sec. 1016, *infra*.

<sup>27</sup> Revised Laws of Massachusetts (1902), pt. II, p. 387, ch. 159.

<sup>28</sup> Howell's Michigan Statutes, Vol. IV, secs. 11931 et seq.

<sup>29</sup> Howell's Michigan Statutes, Vol. IV, sec. 11962.

<sup>30</sup> Howell's Michigan Statutes, Vol. V, sec. 12612.

<sup>31</sup> Howell's Michigan Statutes, Vol. IV, sec. 11963.

SEC. 11964. APPLICATION FOR RECEIVER MAY BE MADE AT CHAMBERS.<sup>32</sup> SEC. 35. Application for such appointment may be made to the circuit judge at chambers, and shall be heard under such regulations as may be by general or special rules prescribed.

### § 902. Mississippi Chancery Acts—Comment and Citation.

The Mississippi Code of 1906 provides specifically for the creation of chancery courts and rather specifically for their procedure (Mississippi Code of 1906, ch. 19, "Chancery Courts," sec. 487 et seq.). This code in addition provides specifically for the appointment of receivers by chancery courts and for their duties, etc. (sec. 625 et seq.).

### § 903. New Jersey Chancery Acts—Comment and Citation.

New Jersey is a so-called chancery state, that is it has its chancery court with distinct chancellors and distinct chancery practice both in form and tribunal. The legislature has prescribed in detail for this chancery practice under title of "Chancery."<sup>33</sup>

### § 904. Tennessee Chancery Acts—Comment and Citation.

Rules of practice of the chancery courts by the Tennessee chancellors in 1871 were enacted into law by the Tennessee legislature in 1871, ch. 97. See further provisions as to receivers as follows:

SEC. 6268 (4452) 5201. RECEIVERS.<sup>34</sup> Receivers may be appointed by the chancellors or circuit judges in vacation, upon reasonable notice of the time and place of such application, and of the person before whom it will be made, or good cause shown why such notice should not be given. (1855-56, ch. 112, sec. 7.)

SEC. 6270 (4454) 5203. PROVISIONS APPLY TO ALL EQUITY PROCEEDINGS. The provisions of this article will apply to all cases in any of the courts in which the extraordinary process herein provided for may be resorted to.

<sup>32</sup> Howell's Michigan Statutes, Vol. IV, sec. 11964.

<sup>33</sup> Compiled Statutes of New Jersey (1911), Vol. I, p. 408 et seq.

<sup>34</sup> Thompson's Shannon's Code, Tennessee (1917), Edition Shannon's Code of 1896.

## STATE CIVIL CODES OF PROCEDURE

**§ 905. History and Comment on State Civil Codes of Procedure.** About the middle of the nineteenth century there developed throughout the country a demand for simplified forms of procedure in our courts.

In 1848 the Civil Code of New York was passed and the distinction in point of form between actions at law and causes in chancery were abolished, yet the same remedies at law and in equity continued to exist as before: The New York Code<sup>35</sup> contained provisions indicating the cases wherein receivers would be appointed. Following New York came Massachusetts, Missouri, Indiana, Kentucky and Ohio with their civil codes modelled after New York, and each code contained provisions bearing on the appointment of receivers and indicating cases wherein receivers might be appointed.

As a part of the New York Code of Civil Procedure, New York state has what is called the "Judiciary Law" (L. 1909, ch. 35): An Act in Relation to the Administration of Justice, constituting chapter thirty of the Consolidated Laws, in effect February 17, 1909. Under this law, sec. 94, a convention of justices assigned to the appellate division of the supreme court meet and establish rules of practice not inconsistent with the provisions of the judiciary law, which is part of the code of civil procedure.

Most state civil codes provide either directly or indirectly for the appointment of the receivers and the governing of the same after appointment. These provisions of such state civil codes are generally found under "Provisional Remedies" and are often termed "General Receivership Statutes."<sup>36</sup>

**§ 906. State Civil Codes as Affecting Receiverships.** We have not reproduced any of the civil codes of procedure because of their great length. The provisions of most of these

<sup>35</sup> Section 244 of said code as originally passed.

<sup>36</sup> See General Receivership Statutes, ch. XXXV, sec. 978, et seq., this volume, *infra*.

civil codes on the subject of general receivers will be cited and further commented on in ch. XXXV, this volume, *infra*.

#### ONTARIO JUDICATURE ACT

**§ 907. History and Comment on Ontario Judicature Act.** By the British North American Act of March 29, 1867,<sup>37</sup> the provinces of Canada, Nova Scotia and New Brunswick were united into one dominion under the crown of the United Kingdom of Great Britain, and the British North American Act gave them a constitution similar in principle to that of the United Kingdom.

Section 92 of said British North American Act is as follows:

EXCLUSIVE POWERS OF PROVINCIAL LEGISLATURES. 92. In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say: \* \* \*

14. "The administration of justice in the province, including the constitution, maintenance and organization of provincial courts, both civil and of criminal jurisdiction and including procedure in civil matters in those courts."

By reason of the authority thus granted, the legislature of Ontario passed in 3-4 Geo. V, ch. 19, "An Act respecting the Supreme Court of Ontario and the Administration of Justice in Ontario," or a so-called judicature act resembling the English Judicature Act of 1873. The act consolidated the High Court of Justice (with King's Bench Common Pleas and Chancery Divisions) and the Court of Appeal under the Supreme Court of Judicature.

This act followed closely the English Judicature Act of 1873 providing for the appointment of receivers "by an interlocutory order of the court in all cases in which it appears to the court to be just or convenient that such order should be made."<sup>38</sup>

<sup>37</sup> 30 and 31 Vict., ch. III.

vised Statutes of Ontario, ch. 56, sec.

<sup>38</sup> Judicature Act of Ontario, Re- 17, p. 685.

**§ 908. Ontario Judicature Act as Affecting Receivers.** This act is cited as "The Judicature Act 3-4, Geo. V., ch. 19, sec. 1," and the receivership provisions are as follows:

**INJUNCTIONS AND RECEIVERS.**<sup>39</sup> 17. A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court, in all cases in which it appears to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally, or upon such terms and conditions as the Court shall deem just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, whether the person against whom it is sought is or is not in possession under any claim of title or otherwise, or if out of possession does or does not claim a right to do the act sought to be restrained under a colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable. (3-4 Geo. V, ch. 19, sec. 17.)

**ACCOUNT BY JOINT-TENANTS.**<sup>40</sup> 131. Actions of account shall and may be brought and maintained against the executors and administrators of a guardian, bailiff and receiver, and also by one joint-tenant and tenant in common, his executors and administrators, against the other as bailiff for receiving more than comes to his just share or proportion, and against the executor and administrator of such joint-tenant or tenant in common. (R. S. O. 1897, ch. 324, sec. 10.)

#### CONTEMPT.<sup>41</sup>

**COURT MAY APPOINT PERSON TO EXECUTE INSTRUMENT FOR PERSON IN CONTEMPT.** 137. (1) When any person has been directed by any judgment or order to execute any deed or other instrument, or make a surrender or transfer, and has refused or neglected to execute such deed, or instrument, or make such surrender or transfer, and has been committed to

<sup>39</sup> The Ontario Judicature Act, ch. 56, sec. 17, Revised Statutes of Ontario (1914), ch. 56, sec. 17, p. 685, cited as 3-4 Geo. V, c. 19, s. 17.

<sup>40</sup> The Ontario Judicature Act, Revised Statutes of Ontario (1914),

ch. 56, sec. 131, p. 724, cited R. S. O. 1897, c. 324, s. 70.

<sup>41</sup> The Ontario Judicature Act, Revised Statutes of Ontario (1914), ch. 56, sec. 137, p. 725, cited R. S. O. 1897, c. 324, s. 18.

prison under process for such contempt, or, being confined in prison for any other cause has been charged with or detained under process for such contempt, and remains in such prison, the court may, upon affidavit that such person has, after the expiration of fourteen days from the time of his being committed under, or charged with, or detained under such process, again refused to execute such deed or instrument, or make such surrender or transfer, order or appoint an officer of the court to execute such deed or other instrument, or to make such surrender or transfer for and in the name of such person.

**EFFECT OF INSTRUMENT.** (2) The execution of such deed or other instrument, and the surrender or transfer in his name made by such officer, shall in all respects have the same force and validity as if the same had been executed or made by the party himself.

**NOTICE TO BE GIVEN.** (3) Within ten days after the execution or making of any such deed or other instrument, or surrender or transfer, notice thereof shall be given by the adverse solicitor to the party in whose name the same is executed or made; and such party, as soon as the deed or other instrument, surrender or transfer is executed or made, shall be considered as having cleared his contempt, except as far as regards the payment of the costs of the contempt, and shall be entitled to be discharged from custody; and the court shall make such order as shall be deemed just touching the payment of the costs of or attending any such deed, surrender, instrument or transfer. (R. S. O. 1897, ch. 324, sec. 18.)

# CHAPTER XXXIII

## RULES OF COURT AS AFFECTING RECEIVERSHIPS

### ANALYSIS

#### RULES OF ENGLISH SUPREME COURT OF JUDICATURE

- § 909. History and Comment on Rules of English Supreme Court of Judicature.
- § 910. Rules of English Supreme Court of Judicature as Affecting Receiverships.

#### RULES OF SUPREME COURT OF UNITED STATES

- § 911. History and Comment on Rules of Supreme Court of United States.
- § 912. Rules of Supreme Court of United States as Affecting Receiverships.

#### RULES OF UNITED STATES CIRCUIT COURTS OF APPEALS

- § 913. History and Comment on Rules of United States Circuit Courts of Appeals.
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#### RULES OF UNITED STATES DISTRICT COURTS AND STATE COURTS

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- § 920. Colorado Rules of Court—Cited.
- § 921. Connecticut Rules of Court—Cited.
- § 922. Florida Rules of Court—Cited.
- § 923. Georgia Rules of Court—Cited.
- § 924. Idaho Rules of Court—Cited.
- § 925. Illinois Rules of Court—Cited.
- § 926. Indiana Rules of Court—Cited.
- § 927. Iowa Rules of Court—Cited.
- § 928. Kansas Rules of Court—Cited.
- § 929. Kentucky Rules of Court—Cited.
- § 930. Louisiana Rules of Court—Cited.



- § 931. Maine Rules of Court—Cited.
- § 932. Maryland Rules of Court—Cited.
- § 933. Michigan Rules of Court—Cited.
- § 934. Minnesota Rules of Court—Cited.
- § 935. Missouri Rules of Court—Cited.
- § 936. Mississippi Rules of Court—Cited.
- § 937. Montana Rules of Court—Cited.
- § 938. New Mexico Rules of Court—Cited.
- § 939. Nebraska Rules of Court—Cited.
- § 940. Nevada Rules of Court—Cited.
- § 941. New Hampshire Rules of Court—Cited.
- § 942. New Jersey Rules of Court—Cited.
- § 943. New York Rules of Court—Cited.
- § 944. North Carolina Rules of Court—Cited.
- § 945. North Dakota Rules of Court—Cited.
- § 946. Ohio Rules of Court—Cited.
- § 947. Oklahoma Rules of Court—Cited.
- § 948. Oregon Rules of Court—Cited.
- § 949. South Carolina Rules of Court—Cited.
- § 950. South Dakota Rules of Court—Cited.
- § 951. Tennessee Rules of Court—Cited.
- § 952. Texas Rules of Court—Cited.
- § 953. Utah Rules of Court—Cited.
- § 954. Vermont Rules of Court—Cited.
- § 955. Virginia Rules of Court—Cited.
- § 956. Washington Rules of Court—Cited.
- § 957. West Virginia Rules of Court—Cited.
- § 958. Wisconsin Rules of Court—Cited.
- § 959. Wyoming Rules of Court—Cited.

#### RULES OF ENGLISH SUPREME COURT OF JUDICATURE

§ 909. **History and Comment on Rules of English Supreme Court of Judicature.** Courts are guided and controlled in their activities first by the constitution of their sovereign power, be that constitution unwritten as in England or written as in the United States and in the several states. Furthermore, courts are guided and controlled by legislative acts in the form of practice or judicature acts, judicial and civil codes and other acts or statutes. In addition, courts are guided and controlled by the decisions of other courts forming precedents. Acting within such limitations courts have a great deal of discretion and frequently formulate either written or unwritten rules of court for the guidance of counselors and litigants. In Eng-

land, prior to 1860, chancery courts regulated themselves and their course of action and practice by "Orders." In 1860 there were in existence in England Chancery Consolidated General Orders.

Previous to 1873 the English common-law courts regulated their practice and procedure by general rules. For instance, in 1852 the Common-Law Procedure Act was passed.<sup>1</sup>

Under authority of sec. 223 of that act the *Regulae Generales* were adopted by the common-law courts at their Hilary term, 1853. These rules regulated the practice and procedure in the common-law courts of England.

In 1873 the English Judicature Act was passed in effect consolidating all the high courts of England under the name Supreme Court of Judicature. Under this act and subsequent amendments thereto a rule committee is appointed which makes the rules of the supreme court which regulate the practice and procedure both in equity and at law of substantially all the courts of England.

By the Supreme Court of Judicature (Procedure) Act of 1894<sup>2</sup> the persons in whom the power of making rules of court were vested includes the Lord Chancellor, the Chief Justice of England, the Master of the Rolls, the President of the Probate, Divorce and Admiralty Divisions; four other judges of the Supreme Court, to be from time to time appointed for the purpose by the Lord Chancellor and in addition the President of the Incorporated Law Society for the time being and also two persons (one of whom shall be a practicing barrister) to be appointed for the purpose in the same manner as the four judges just referred to.<sup>3</sup>

This rule committee or commission makes not only rules or orders governing the practice and procedure of the High Court of Chancery, but of the King's Bench Division and other courts which entertain legal proceedings.

<sup>1</sup> 15 and 16 Vict., c. 76, Act of June 30, 1852.

<sup>2</sup> (1894), 57 and 58, ch. 16-4.

<sup>3</sup> Halsbury, *The Laws of England*, 9, "Courts," p. 65; Judicature Act (1875), 38 and 39 Vict., ch. 77, sec. 25.

Rules of court made by the rule committee must be laid before both houses of parliament within forty days, if parliament is sitting, and if not within forty days of the beginning of the next sitting. There is also power to annul any rules by order in council on any address from either house.<sup>4</sup>

Thus the rules of the supreme court, as made by this rule committee may be said to have the binding force of a legislative act.

The rules made under the powers to make rules given by parliament and conferred by the judicature acts, are mere rules of procedure and do not confer any new jurisdiction or affect the rights of the parties. These rules are divided into orders and the orders are subdivided into rules. This arrangement seems at first a little confusing, but nevertheless that is the arrangement. We quote in full below such portions of the "Rules of the Supreme Court" which directly affect receivers.

**§ 910. Rules of English Supreme Court of Judicature as Affecting Receiverships.** These rules to be found published in full in "The Yearly Practice of the Supreme Court"—Muir, Mackenzie, Willes, Chitty, Ross, published by Butterworth & Co., London, England. They are also to be found in other English legal publications—"Statutory Rules and Orders Revised," and officially published in the "Weekly Notes." We are printing below such portions of these rules and orders as directly affect receivership.

## II. RECEIVERS.<sup>5</sup>

**RECEIVER BY WAY OF EQUITABLE EXECUTION.** 15a. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court or a Judge in determining whether it is just or convenient that such ap-

<sup>4</sup> British South Africa Co. v. Companhia, etc. (1893), A. C. 602, at 626; Kendall v. Hamilton (1879), 4 App. Case 503; North London Ry. Co. v. Great Northern (1883), 11 Q. B. D. 30; Britain v. Rossiter (1883), 11 Q. B. D. 123.

<sup>5</sup> Rules of Supreme Court (1883), Order 50, rr. 15A-18; printed in The Yearly Practice of the Supreme Court for 1911.

pointment should be made shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if they or he shall so think fit, direct any inquiries on these or other matters before making the appointment. (R. S. C., October, 1884.)

**RECEIVER'S SECURITY AND SALARY.** 16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a Judge and taken before a person authorised to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the Court or Judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the Form No. 21 in Appendix L, unless the Court or a Judge shall otherwise order. [672.]

**ADJOURNMENT TO CHAMBERS TO COMPLETE SECURITY.** 17. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or a Judge may adjourn to chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding Rule mentioned, and may thereupon direct such judgment or order to be drawn up. [673.]

**RECEIVER TO ACCOUNT; PENALTY FOR DEFAULT.** 18. When a receiver is appointed with a direction that he shall pass accounts, the Court or Judge shall fix the days upon which he shall (annually, or at longer or shorter periods) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be paid by him. And with respect to any such receiver as shall neglect to leave and pass his accounts and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the Judge before whom any such receiver is to account may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver, and may also, if he shall think fit, charge him with interest at the rate of 5 l. per cent. per annum upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver. [674.]

19. Receivers' accounts shall be in the Form No. 14 in Appendix L., with such variations as circumstances may require. [675.]

PASSING ACCOUNT; FORM OF AFFIDAVIT. 20. Every receiver shall leave in the chambers of the Judge to whom the cause or matter is assigned his account, together with an affidavit verifying the same in the Form No. 22 in Appendix L., with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such account. [676.]

DIRECTIONS TO BE GIVEN WHERE RECEIVER IN DEFAULT. 21. In case of any receiver failing to leave any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at Chambers to show cause why such account or affidavit has not been left, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at chambers or by adjournment into Court, including the discharge of any receiver and appointment of another, and payment of costs. [677.]

FORM OF CERTIFICATE ON RECEIVER'S ACCOUNT. 22. A certificate of the chief clerk stating the result of a receiver's account shall from time to time be taken. Form 3 in the Appendix hereto shall be substituted for Form 22 in Appendix L. (R. S. C., October, 1884.)

MANDAMUS INJUNCTION AND RECEIVER.<sup>6</sup> 6. An application for an order under section 25, sub-section 8, of the principal Act, or under Rules 2 or 3 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said sub-section 8 it may be made either *ex parte* or with notice, and if for an order under Rules 2 or 3 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any other party, there on notice to the plaintiff, and at any time after appearance by the party making the application. [662.]

<sup>6</sup> Rules of Supreme Court (1883). Practice of the Supreme Court for Order 50, rr. 6; printed in The Yearly 1911.

## RULES OF SUPREME COURT OF UNITED STATES

§ 911. **History and Comment on Rules of Supreme Court of United States.** The Supreme Court of United States at a very early date held that although congress had undoubtedly the right to prescribe the process and mode of proceeding in a particular case in which the constitution had conferred jurisdiction yet the omission to legislate on the subject could not deprive the court of jurisdiction conferred and it was a duty imposed upon the court in the absence of any legislation by congress to prescribe its own mode and form of procedure.<sup>6a</sup> In 1792 the attorney general of the United States moved the supreme court for information relative to the system of practice by which the attorneys and counsellors of the supreme court shall regulate themselves, and of the place in which rules in causes therein depending shall be obtained. The chief justice of the United States at the subsequent day stated that, "The court considers the practice of the Courts of King's Bench and Chancery in England as affording outlines for the practice of this court and that they will, from time to time, make such alterations therein, as circumstances may render necessary."<sup>7</sup> However the English Rules of Procedure only offer analogies and nothing more.<sup>7a</sup>

Said Justice McLean of the United States Supreme Court: "It is not essential that any court, in establishing or changing its practice should do so by the adoption of written rules. Its practice may be established by a uniform mode of proceeding for a series of years, and this forms the law of the court."<sup>8</sup> For new U. S. Sup. Ct. rules, see sec. 912, *infra*.

§ 912. **Rules of Supreme Court of United States as Affecting Receiverships.** The rules of the Supreme Court of the United States as they exist today were promulgated by the

<sup>6a</sup> Florida v. Georgia (1854), 17 How. 478, at 492, 15 L. ed. 181.

<sup>7</sup> Hayburn's Case (1792), 2 Dall. 408, at 414, 1 L. ed. 436.

<sup>7a</sup> Florida v. Georgia (1854), 17 How. 478, at 492, 15 L. ed. 181.

<sup>8</sup> Duncan v. United States (1833), 7 Peters 433, at 451, 8 L. ed. 739.

supreme court, December 22, 1911, and printed at the close of 222 U. S. 668, 32, Sup. Ct. Rep. —. On April 1, 1912, Rule 21 was amended by adding a section and the added section printed in 223 U. S., p. 750.

The rules have no direct reference to receivers as such, but they must be kept in mind when a receivership case is filed or is pending in the supreme court. We have not printed them here because they are generally available for reference.

#### RULES OF UNITED STATES CIRCUIT COURTS OF APPEALS

**§ 913. History and Comment on Rules of the United States Circuit Courts of Appeals.** Each of the nine circuit courts of appeals have adopted its own rules. These rules are nearly alike in each circuit, but some variance is found. These rules do not generally affect receivers directly but have such an important indirect bearing that they should be carefully inspected. We have not printed them here because they are so readily available in each circuit, and will be found printed where indicated below.

#### **§ 914. Rules of United States Circuit Courts of Appeals as Affecting Receiverships.**

1st Circuit—150 Fed. XXV, 79 C. C. A. XXV.

2d Circuit—150 Fed. XXV, 79 C. C. A. XXV.

3d Circuit—224 Fed. V, 137 C. C. A. V.

4th Circuit—233 Fed. V, 146 C. C. A. V.

5th Circuit—150 Fed. XXV, 79 C. C. A. XXV.

6th Circuit—202 Fed. V, 118 C. C. A. V.

7th Circuit—150 Fed. XXV, 179 C. C. A. XXV.

8th Circuit—188 Fed. V, 109 C. C. A. V.

9th Circuit—208 Fed. V, 124 C. C. A. V.

#### RULES OF UNITED STATES DISTRICT COURTS AND STATE COURTS

**§ 915. History and Comment on Rules of United States District Courts and State Courts.** Since courts may make their own rules of practice and procedure, so long as they keep

within the boundaries laid down by the sovereign power which creates such courts, it follows that most courts promulgate a set of rules affecting the practice before such court. They may directly affect the appointment and powers of a receiver or they may indirectly affect such appointment and should be carefully consulted in all receivership cases.

**§ 916. Rules of United States District Courts and State Courts as Affecting Receiverships.** We have not reproduced these rules because they do not generally directly affect receiverships. Receiverships are, however, indirectly affected by such rules and they must be carefully studied by a practitioner in such courts.

The rules of the various United States district courts are generally printed in pamphlet form and may be obtained for such courts. The Rules of Court of the various state supreme courts and appellate courts are frequently printed in the various reporters and we have indicated below where most of these rules of court can be found.

**§ 917. Alabama Rules of Court—Cited.** Rules of Court and Practice as amended by the Supreme Court of Alabama, July 29, 1907; printed in Code of Alabama, 1907, Vol. II, p. 1503. General Rules p. 1503. Rules of Practice in the Supreme Court, p. 1505. Rules of Practice in the Circuit and Inferior Courts of Common-Law Jurisdiction, p. 1517. Rules of Chancery Practice, p. 1528. Court Rules, Supreme Court of Alabama, Rule 87 of Chancery Practice, and amendment adopted July 23, 1904; printed in 37 So. V.

**§ 918. Arizona Rules of Court—Cited.** Court Rules, Supreme Court of Arizona, approved October 7, 1912, in force November 16, 1912, found in 126 Pac. IX. Amendment to rules October 7, 1912, in effect November 16, 1912, found in 139 Pac. IX.



§ 919. **California Rules of Court—Cited.** Court Rules, Supreme Court and District Courts of Appeals of California, adopted January 16, 1912, to take effect March 18, 1912; printed in 119 Pac. IX.

§ 920. **Colorado Rules of Court—Cited.** Court Rules, Supreme Court of Colorado, adopted by the Supreme Court of Colorado January 8, 1912, in effect September 14, 1914, superseding all statutory and code provisions and rules and parts thereof in conflict therewith; printed in 148 Pac. IX. Rules of Practice and Procedure in Civil Causes, adopted by the Supreme Court of Colorado June 19, 1914, in effect September 14, 1914. These rules given all courts of record of Colorado, and were made in accordance with the act of the general assembly of Colorado, Sessions Laws (1913), 447; printed in 148 Pac. XVI.

§ 921. **Connecticut Rules of Court—Cited.** Rules of Practice in the Supreme Court of Errors and the Superior Court of the State of Connecticut; revised June, 1890; printed in 26 Atl. V.

§ 922. **Florida Rules of Court—Cited.** Court Rules, Supreme Court of Florida, adopted March 2, 1905; printed in 37 So. V. Rule 19 revoked, and Rule 20 amended, June 12, 1905; printed in 45 So. V. Rule 20 further amended, July 19, 1908; printed in 46 So. V.

§ 923. **Georgia Rules of Court—Cited.** Court Rules, Supreme Court of Georgia; printed in 57 S. E. V. Court Rules, Court of Appeals of Georgia, adopted January 7, 1907; printed in 57 S. E. X. Amendment to Rules of Court of Appeals of Georgia; printed in 71 S. E. VII.

§ 924. **Idaho Rules of Court—Cited.** Court Rules, Supreme Court of Idaho, adopted June 8, 1915, in effect August 8, 1915; printed in 153 Pac. VII.

§ 925. **Illinois Rules of Court—Cited.** Court Rules, Supreme Court of Illinois, revised to May 24, 1916; printed in 111 N. E. VI.

§ 926. **Indiana Rules of Court—Cited.** Court Rules, Supreme and Appellate Courts of Indiana, adopted January 4, 1900, effective November 28, 1900; printed in 55 N. E. IV.

§ 927. **Iowa Rules of Court—Cited.** Statute and Rules Regulating Practice in the Supreme Court of Iowa, revised and adopted at the September term, 1910, to take effect January 1, 1911; printed in 128 N. W. V. Amendment to Iowa Rules of Supreme Court of September 1, 1913; printed in 142 N. W. VII.

§ 928. **Kansas Rules of Court—Cited.** Rule of Supreme Court of Kansas, revised May 29, 1909; printed in 104 Pac. VII; revised July 15, 1915; printed in 157 Pac. VII.

§ 929. **Kentucky Rules of Court—Cited.** Court Rules, Court of Appeals of Kentucky, in force April term, 1906; printed in 92 S. W. IX. Further rules, Court of Appeals of Kentucky, printed in 149 S. W. VII. Further rules, Court of Appeals of Kentucky, adopted March, 1913; printed in 154 S. W. VII. Amendments to Rules, Court of Appeals of Kentucky, adopted May 26, 1914; printed in 169 S. W. VII.

§ 930. **Louisiana Rules of Court—Cited.** Court Rules, Supreme Court of Louisiana, in effect March 15, 1915; printed in 67 So. VII. Amendments adopted November 3, 1915; printed in 69 So. VI.

§ 931. **Maine Rules of Court—Cited.** Court Rules, Supreme Judicial Court of Maine, promulgated June, 1908; printed in 70 Atl. VII. Equity Rules, Supreme Judicial Court of Maine, promulgated June, 1908; printed in 70 Atl. XIV.

§ 932. **Maryland Rules of Court—Cited.** Court Rules, Court of Appeals of Maryland, take effect April 5, 1909, except Rule 25; printed in 80 Atl. X.

§ 933. **Michigan Rules of Court—Cited.** Supreme Court of Michigan, Rule 20, amended March 27, 1906; printed in 108 N. W. V. Rule 45, amended June, 1911, to take effect July 1, 1911; printed in 131 N. W. V. Circuit Court of Michigan, Rule 58, adopted February 16, 1906, in effect February 20, 1906; printed in 108 N. W. V.

§ 934. **Minnesota Rules of Court—Cited.** Court Rules of Practice of the Supreme Court of Minnesota, in force July 1, 1913; printed in 130 N. W. VII. Amendment adopted May 15, 1913; printed in 140 N. W. VIII. Amendments adopted March 11, 1914; printed in 145 N. W. XV.

§ 935. **Missouri Rules of Court—Cited.** Court Rules, Supreme Court of Missouri, adopted April 10, 1916; printed in 186 S. W. VII. Court Rules, Court of Appeals of Missouri, Kansas City Court of Appeals, adopted January 4, 1913; printed in 169 S. W. XII; see further, 178 S. W. VII. St. Louis Court of Appeals, revised July 20, 1909, in force August 15, 1909; printed in 169 S. W. XV; further, 188 S. W. VI. Springfield Court of Appeals, adopted August 19, 1909; printed in 169 S. W. XX; amended February 24, 1916; printed in 181 S. W. VI.

§ 936. **Mississippi Rules of Court—Cited.** Court Rules, Supreme Court of Mississippi, adopted October term, 1912; printed in 59 So. VII. Amendments adopted February 21, 1916; printed in 70 So. VII. Rules for separating the court in two permanent divisions, adopted January 31, 1916; printed in 70 So. VI.

**§ 937. Montana Rules of Court—Cited.** Court Rules, Supreme Court of Montana, to take effect November 28, 1911; printed in 123 Pac. XV.

**§ 938. New Mexico Rules of Court—Cited.** Court Rules, Supreme Court of New Mexico, adopted July 15, 1915, effective September 1, 1915; printed in 153 Pac. XVII.

**§ 939. Nebraska Rules of Court—Cited.** Court Rules, Supreme Court of Nebraska, in force February 1, 1914; printed in 148 N. W. VII.

**§ 940. Nevada Rules of Court—Cited.** Court Rules, Supreme Court of Nevada, adopted September 1, 1879. Amendments of October 25, 1911. Amendments effective April 1, 1912; printed in 154 Pac. VII.

**§ 941. New Hampshire Rules of Court—Cited.** Court Rules, Supreme Court of New Hampshire, May Session, 1901; printed in 59 Atl. VII.

**§ 942. New Jersey Rules of Court—Cited.** Court Rules, Court of Errors and Appeals of New Jersey, promulgated November term, 1898; printed in 42 Atl. V.

**§ 943. New York Rules of Court—Cited.** Rules of the New York State Court of Appeals, adopted October 22, 1894, amended December 15, 1906, to take effect January 7, 1907; printed in Parson's New York Pocket Code Civil Procedure Annotated, 1914, p. 74a et seq. General Rules of Practice, Supreme Court Rules, adopted in convention of the justices of the supreme court, assigned to the appellate division thereof, held at Albany December, 1895, pursuant to Code of Procedure, sec. 17, amended October 24, 1899, October 24, 1905, April 30, 1910, June 17, 1913; printed in Parson's New York Pocket Code Civil Procedure Annotated (1914), p. 77 et seq.

**§ 944. North Carolina Rules of Court—Cited.** Court Rules and Rules of Practice in the Supreme Court of North Carolina, revised and adopted February, 1914; printed in 81 S. E. VII. Rule 29, adopted May 30, 1911; printed in 71 S. E. VII. Rule 48, amended December 19, 1916; printed in 90 S. E. VI. Rule 28, amended December 1, 1915; printed in 88 S. E. VI. Rule 52, amended February 8, 1916; printed in 89 S. E. VI. Rules of Supreme Court of Appeals of South Carolina; printed in 71 S. E. VII. Rule 17; printed in 88 S. E. VI. Rules of North Carolina Superior Courts; printed in 81 S. E. XVI.

**§ 945. North Dakota Rules of Court—Cited.** Court Rules of Practice of the Supreme Court of North Dakota, adopted February 16, 1914, in effect April 1, 1914; printed in 145 N. W. VII.

**§ 946. Ohio Rules of Court—Cited.** Court Rules of Supreme Court of Ohio, January term, 1910; printed in 93 N. E. V.

**§ 947. Oklahoma Rules of Court—Cited.** Court Rules, Supreme court of Oklahoma, adopted July 22, 1913; printed in 137 Pac. IX.

**§ 948. Oregon Rules of Court—Cited.** Court Rules, Supreme Court of Oregon, adopted September 5, 1911, take effect October 2, 1911; printed 117 Pac. IX.

**§ 949. South Carolina Rules of Court—Cited.** Court Rules, Supreme Court of South Carolina, take effect November 1, 1916; printed in 90 S. E. VI.

**§ 950. South Dakota Rules of Court—Cited.** Court Rules, Supreme Court of South Dakota, adopted April 1, 1913, effective April 15, 1913; printed in 140 N. W. XII. Amendments adopted April 29, 1913, in force May 20, 1913; printed in 140 N. W. XIII. Amendments, Rule 26, adopted March 8, 1915; printed in 153 N. W. VII.

**§ 951. Tennessee Rules of Court—Cited.** Court Rules, Supreme Court of Tennessee, promulgated September 28, 1912, effective January 1, 1913; printed in 160 S. W. VII. Further rules, adopted September, 1915; printed in 186 S. W. XI.

**§ 952. Texas Rules of Court—Cited.** Rules for the Courts of Texas, adopted October 8, 1892; printed in 142 S. W. VII, June 29, 1895; November 8, 1897; December 22, 1898; February 7, 1901; December 23, 1901; March 20, 1902; March 15, 1906; November 22, 1911; January 24, 1912; October 30, 1912; June 25, 1913; printed in 159 S. W. VIII.

**§ 953. Utah Rules of Court—Cited.** Court Rules, Supreme Court of the State of Utah, revised and adopted May 2, 1896; amended to January, 1908; printed in 97 Pac. VII.

**§ 954. Vermont Rules of Court—Cited.** Court Rules, Supreme Court of Vermont, adopted November 16, 1909; printed in 77 Atl. VI.

**§ 955. Virginia Rules of Court—Cited.** Supreme Court of Appeals of Virginia; printed in 71 S. E. VIII.

**§ 956. Washington Rules of Court—Cited.** Court Rules, Supreme Court of Washington, adopted June 8, 1913; printed in 132 Pac. IX; printed in 71 Wash. X. Amendment to Rule VI, adopted December 30, 1914; printed in 146 Pac. IX. Amendment to Sec. E, Rule XIV, adopted February 18, 1915; printed in 159 Pac. VII.

**§ 957. West Virginia Rules of Court—Cited.** Supreme Court of Appeals of West Virginia, in effect after May 15, 1915; printed in 84 S. E. VII.

**§ 958. Wisconsin Rules of Court—Cited.** Superior Court of Wisconsin. Circuit Court of Wisconsin; printed in 108 N. W. VI. Rule 43a of Supreme Court of Wisconsin, adopted April

26, 1913; printed in 125 N. W. V. Rule 19, adopted April 5, 1911; printed in 131 N. W. V. Rule 63, adopted May 2, 1911; printed in 131 N. W. V. Rule 9, amended March 12, 1912; printed in 135 N. W. VII. Rules 17, 22, 23, 24, 39, 40, 41 and 62, adopted January 11, 1913, to take effect July 1, 1913; printed in 138 N. W. VII. Rule 64, adopted May 18, 1915; printed in 151 N. W. VII.

**§ 959. Wyoming Rules of Court—Cited.** Supreme Court of Wyoming. General Rules, adopted November 9, 1909, to take effect December 1, 1909; printed in 104 Pac. XI.

## CHAPTER XXXIV

### EQUITY RULES AND ORDERS IN CHANCERY AS AFFECTING RECEIVERSHIPS

#### ANALYSIS

##### ENGLISH EQUITY OR CHANCERY RULES AND ORDERS

§ 960. History and Comment on English Equity Rules and Orders.

§ 961. English Equity Rules and Orders as Affecting Receiverships.

##### UNITED STATES EQUITY RULES OF PRACTICE

§ 962. History and Comment on United States Equity Rules of Practice.

§ 963. United States Equity Rules of Practice as Affecting Receiverships  
—Cited.

##### STATE CHANCERY COURTS RULES OF EQUITY

§ 964. History and Comment on State Chancery Courts Rules of Equity.

§ 965. State Chancery Courts Rules of Equity—Cited and Reported.

§ 966. Alabama Chancery Rules as Affecting Receiverships.

§ 967. Delaware Chancery Rules as Affecting Receiverships.

§ 968. Maine Chancery Rules as Affecting Receiverships.

§ 969. New Jersey Chancery Court Rules—Cited.

§ 970. Pennsylvania Supreme Court Chancery Rules—Cited.

##### ENGLISH EQUITY OR CHANCERY RULES AND ORDERS

§ 960. **History and Comment on English Equity Rules and Orders.** As early as the time of Henry VIII we find general orders in chancery issued by Lord Chancellor Wriothesley, afterward Earl of Southampton, relating to process, injunctions and officers of the court. From time to time various chancellors issued or promulgated general orders in chancery regulating and systematizing the practice before their courts.<sup>1</sup>

Coming down to more modern times, we find in 1852,<sup>2</sup> passed by parliament, "An Act to Amend the Practice and Course

<sup>1</sup> Equitable Jurisdiction of the Court of Chancery, Spence, Vol. I, p. 397, ch. XI

<sup>2</sup> 15 and 16 Vict., ch. 86.



of Proceeding in the High Court of Chancery," and by sec. LXVII of that act the Lord chancellor by and with the advice of certain other judges may make and issue such general rules or orders from time to time.

In 1873 the celebrated judicature act was passed by parliament providing for a rule committee to make rules of procedure for both chancery and common-law practice. The procedure in England both at law and in equity has been simplified much as it has been in our code states and one set of rules of procedure governs.

Since the common-law and equity practice has been amalgamated in England and one set of rules governs this amalgamated practice, we refer the reader to ch. XXXIII, sec. 910, *supra*, for such rules and orders of the English Supreme Court of Judicature as affect receiverships.

**§ 961. English Equity Rules and Orders as Affecting Receiverships.** See such rules printed in ch. XXXIII, sec. 910.

#### UNITED STATES EQUITY RULES OF PRACTICE

**§ 962. History and Comment on United States Equity Rules of Practice.** Under the authority given to the United States Supreme Court by the Act of Congress of May 8, 1792, ch. 137, sec. 2, the supreme court in 1882 promulgated thirty-three "Rules of Practice for the Courts of Equity of the United States," effective from and after July 1, 1822. New rules have been promulgated from time to time, the last time being November 4, 1912.<sup>3</sup> These last rules of equity were quite an innovation; they do not, like the former rules,<sup>4</sup> refer to the English High Court of Chancery practice. Furthermore, the United States Rules of Equity of 1912 have abolished technical forms of pleadings in equity.<sup>5</sup> In the Rules of Equity of 1912 no direct rule has been promulgated on the subject of receivers,

<sup>3</sup> 226 U. S. 649.

<sup>5</sup> Rules of Practice in Equity,

<sup>4</sup> Rules of 1822, Rule XXXIII; 1912, Rule 18.  
Rules of 1866, Rule 90.

but since the appointment of a receiver is an equitable remedy, these rules affect receiverships.

**§ 963. United States Equity Rules of Practice as Affecting Receiverships—Cited.** Since these rules do not affect receiverships directly and since they are generally readily available,<sup>6</sup> we have not printed them.

#### STATE CHANCERY COURTS RULES OF EQUITY

**§ 964. History and Comment on State Chancery Courts Rules of Equity.** Few states still retain their chancery courts and their chancery practice in form distinct from their common-law courts. Those states which do have such chancery courts are Alabama, Delaware, Maryland, New Jersey and Mississippi. Pennsylvania has not a distinct chancery court, nevertheless the Supreme Court of Pennsylvania has adopted rules of equity practice.<sup>7</sup>

Chancery practice and chancery courts have existed in Delaware since the inception of the state. We find no definite equity rules laid down by the legislature, but from time to time the chancellor of Delaware has promulgated rules for the Court of Chancery of Delaware. The latest rules were promulgated by Chancellor Charles M. Curtis, October 1, 1913,<sup>8</sup> changing somewhat the rules promulgated by Chancellor Bates and published by him in 1868.

On March 26, 1913, the legislature of Delaware passed "An Act in Relation to the Simplifying and Expediting of the Procedure and Trial of Civil and Criminal Causes in the Courts of this State,"<sup>9</sup> providing for a code commission to report a code in 1915.

<sup>6</sup> Promulgated November 4, 1912; in force on and after February 1, 1913, and published in 276 U. S. 629, with index. See Hopkins' New Federal Equity Rules, Annotations and Forms.

<sup>7</sup> See *infra*, under Pennsylvania

Supreme Court Chancery Rules, sec. 970; published in Purdon's Digest, 13th ed., Supp., p. 250.

<sup>8</sup> 9 Delaware Chancery Reports, preface.

<sup>9</sup> Laws of Delaware, Vol. 27 (1913).

**§ 965. State Chancery Courts Rules of Equity—Cited and Reported.** See following sections.

**§ 966. Alabama Chancery Rules as Affecting Receiverships.** The Supreme Court of Alabama on July 29, 1907, promulgated rules of court and practice, including rules of chancery practice. These rules of chancery practice include two rules directly applicable to receiverships which we quote as follows:

#### RECEIVERS,<sup>10</sup>

##### RULE

110. One receiver for same property, though more than one suit.

##### RULE

111. Order, where there is one receiver and two or more suits.

110. (112) (112) (111) **ONE RECEIVER FOR SAME PROPERTY, THOUGH MORE THAN ONE SUIT.** Where there are more suits than one in which a receiver is required, whether the suits be in the same or different courts or divisions, but one receiver shall be appointed for the same property; and should the receiver be appointed in a suit not entitled to priority, he shall hold the property, funds, and proceeds subject to discharge the liens of the parties in their regular order of priority, and the chancellor who may have appointed him shall so decree, and the same shall be so applied.

111. (113) (113) (112) **ORDER, WHERE THERE IS ONE RECEIVER AND TWO OR MORE SUITS.** Where two or more bills are filed in different courts or divisions, and a receiver shall have been appointed in one of them, the complainants in the other suits, on producing a certified copy of the proceedings in their causes to the court where the receiver shall have been appointed, shall be entitled to an order that such receiver hold the property, or the funds and proceeds, to be applied according to the priority liens of the several cases without regard to the first decree; and in such case the creditors or complainants in the suits in which the receiver was not appointed, if dissatisfied with the receiver appointed in the other suit, may move the court in which the receiver was appointed for his removal, and

<sup>10</sup> Code of Alabama (1907), Vol. II, p. 1563, et seq.; for Alabama general receivership statute, see

Code of Alabama (1907), secs. 5726, et seq.

the appointment of another; and a sufficient cause being shown, the court must remove him and appoint some one else.

**§ 967. Delaware Chancery Rules as Affecting Receiverships.**

We print below in full those chancery rules of the Delaware Chancery Court which directly affect receivership because of their excellency and because they provide in detail for many duties and obligations of receivers which are not provided for generally by the formal rules of equity or by statute. The absence of such specific rules of court or statutory enactments concerning the duties of receivers sometimes means the loose management of property by receivers.

On April 25, 1910, the following rules concerning receivers were adopted: <sup>10a</sup>

**RULE 95.** Upon the filing of a bill for the appointment of a receiver of a corporation, in the absence of an answer admitting the allegations of the bill, an order may be made by the Chancellor that a rule issue and be served upon the defendant to show cause why a receiver should not be appointed.

**RULE 96.** Upon the hearing of the rule, if an answer admitting the allegations of the bill be not then filed, a receiver *pendente lite* may be appointed to continue until final decree, or until the further order of the Chancellor, upon the giving of a bond by the receiver to the State of Delaware, within the time fixed in the order of appointment, with surety to be approved by the Chancellor.

**RULE 97.** The bond of the receiver shall be in the following form:

*Know All Men By These Presents, That we,.....*  
of the (City or Town) of....., .....  
County, and State of Delaware, and ..... are held  
and firmly bound unto the State of Delaware, in the penal  
sum of .....Dollars, lawful money of the United States  
of America, to be paid to the said State of Delaware: To which  
payment well and truly to be made, we bind ourselves, jointly  
and severally, and our respective heirs, administrators, execu-  
tors, successors and assigns, firmly for and in the whole firmly

<sup>10a</sup> Reported in 9 Del. Ch. at end of volume.

by these presents. *Sealed* with our seals and dated this.....  
day of ..... in the year of our Lord one thousand  
..... hundred and .....

*The Condition of This Obligation Is Such, That if the above*  
bounden ....., who was on the ..... day  
of ..... A.D. 19...., appointed by the Chancellor  
of the State of Delaware, Receiver of .....,  
a corporation of the State of Delaware, and has accepted said  
appointment with all the duties and obligations pertaining  
thereunto, shall well and faithfully execute his said office of  
Receiver and perform and fulfill all trusts and duties to the  
said office appertaining, and shall observe and perform all orders  
and directions of the Chancellor touching the administration  
of the said receivership, and the care, management and disposal  
of the trust estate and funds, and shall faithfully and truly  
account for all the moneys, effects and assets of the said cor-  
poration which shall come into his hands and possession, and  
if at the expiration of his said receivership, or otherwise as  
the Chancellor may order, the said ....., or in  
the case of his decease, if the heirs, executors and administrators  
of the said ....., shall without delay, convey,  
assign, deliver and pay over unto the person or persons entitled  
to receive the same, or to his successor, all the estate and funds  
then held by him as such receiver, subject to such allowance as  
the Chancellor shall make, then this obligation to be void;  
otherwise to be and remain in full force and virtue.

Signed, sealed and delivered .....[SEAL]  
in the presence of .....[SEAL]

**RULE 98.** No person shall be appointed sole receiver who  
does not at the time of his appointment reside in the State of  
Delaware.

**RULE 99.** In case the receiver appointed by the Chancellor  
shall fail to give bond, with surety, within the time required by  
the order of his appointment, said appointment shall be void.

**RULE 100.** Every receiver shall, unless otherwise ordered by  
the Chancellor, within thirty days from the time of his appoint-  
ment and qualification, file with the Register in Chancery:

(1) An inventory of all the estate, property and effects of  
the company, and an appraisalment thereof to be made by ap-  
praisers to be appointed by the Chancellor.

(2) A list of the debtors and creditors of the company, showing all the debts due to and from the company with the last known address or place of business of each debtor and creditor.

(3) A list of the stockholders of the company with their last known post office address or place of business.

**RULE 101.** Every receiver shall, within three months of his appointment, submit to the Chancellor a full report of his proceedings and the state of affairs of the company, and thereafter make like report at the expiration of each six months during the pendency of the receivership.

**RULE 102.** Within fifteen (15) days after the filing of a list of the creditors of the company, the Register in Chancery shall give to every known creditor of the company notice by mail to file their claims against the company within a certain time to be fixed in said notice which shall not be less than sixty days after the mailing of said notices; and cause a like notice to be published in such newspaper or newspapers and for such time as shall be designated by the Chancellor; and forthwith report to the Chancellor a performance of the duty.

**RULE 103.** All claims of creditors of the company shall be filed in the office of the Register in Chancery and shall consist of a statement in writing under oath, signed by the creditor, setting forth the amount claimed to be due at the time of the appointment of the receiver, the consideration therefor and the payments received on account thereof, if any, and shall contain an averment whether any security is held therefor, and, if so, what.

All book accounts shall be fully itemized.

When interest is claimed on instruments bearing interest according to the terms thereof, the time from which interest is claimed and the rate thereof shall be stated in the claim.

Claims based on obligations of record must be accompanied with a certified abstract of the record.

Claims based on written evidence of indebtedness must be accompanied by such instrument.

Claims having priority and claims based upon liens on the property of the corporation shall contain a statement of the priority, if any, to which they are entitled.

**RULE 104.** Exceptions to claims may be filed in the office of the Register in Chancery by the receiver or by any party

in interest within thirty days from the expiration of the time for filing claims and will be heard by the Chancellor upon such notice to the receiver, claimant and exceptant as may be ordered by the Chancellor.

**RULE 105.** Accounts rendered by receivers shall be for a period therein stated, and show in detail (1) all moneys received, when, from whom or from what source; (2) gains or losses on sales made of the property included in the inventory; (3) payments made, to whom and for what purpose. Every such account shall be accompanied by oath of the receiver that the account is just and true, and shall be filed in the office of the Register in Chancery, with the vouchers for all payments; whereupon\* it shall be the duty of the Register in Chancery to examine the account, compare it with the vouchers, prove the calculations and additions and certify therein whether he finds the same to be correct.

**RULE 106.** A receiver desiring compensation for services and allowances for his expenses and services of his counsel shall file with his account a petition for such allowances therein stating generally the services rendered by himself and counsel, and the compensation desired for the services of each.

**RULE 107.** Upon the filing of an account by a receiver, or a claim of a receiver for compensation and allowances, the Register in Chancery shall forthwith give notice thereof by mail to all creditors who have filed claims; and no action shall be taken upon said account or petition for compensation and allowances until the expiration of at least two weeks after the filing of such account or petition; and the register shall report to the Chancellor his performance of the duty.

**RULE 108.** Exceptions to said account or allowances prayed for by the receiver may be taken in writing by any party interested and shall be filed in the office of the Register within two weeks of the filing thereof, and thereupon the Register in Chancery shall forthwith give notice thereof in writing by mail to the receiver, or his counsel, and the exceptions may be heard by the chancellor after the expiration of ten days from the time such notice is sent.

**RULE 109.** Upon settling the final account with the receiver the Chancellor may make final allowances to the receiver for

his services and expenses and for the services of his counsel, and order the distribution by the receiver among the creditors or stockholders of the company of the moneys remaining for distribution, to which they are entitled; and thereupon the receiver shall make report to the Chancellor of his proceedings under the order of distribution, submitting vouchers for all payments so made.

**RULE 110.** When a receiver shall have made a final distribution of the property and effects of the company and duly reported the same, and shall have complied with all orders and decrees of the Chancellor touching the distribution, the receiver may be discharged by the Chancellor upon petition of the receiver.

**RULE 111.** At the hearing of exceptions to claims and to accounts, the testimony of witnesses, either given orally at the hearing, or taken by depositions upon commission as in other causes pending in Chancery, will be received by the Chancellor, or by a master to be appointed, as the Chancellor may order. When testimony is taken orally before the Chancellor, stenographic notes of such testimony shall be taken and a transcript thereof made for the record in case of appeal.

**RULE 112.** Where the receiver shall fail to make or file reports, returns or accounts at the time when they shall be due, the Register shall report the same to the Chancellor and also notify the receiver of the delinquency.

**RULE 113.** The receiver shall deposit as a special account in his name as receiver all moneys of the corporation that may come into his hands in a banking institution in the State of Delaware, and shall immediately upon making his first deposit therein file in the office of the Register a declaration in writing of the depository.

**RULE 114.** Original instruments filed by claimants may be withdrawn upon application to the Chancellor, and a copy thereof substituted therefor, until the Chancellor shall upon application of the receiver or any party interested require the production of the original instrument.

**RULE 115.** Unless otherwise ordered by the Chancellor, notice of all sales to be made by the receiver shall be sent by the receiver by mail at least two weeks prior to the day of



sale to all creditors who have filed claims, and to all stockholders.

**§ 968. Maine Chancery Rules as Affecting Receiverships.** The Supreme Judicial Court of Maine in 1908 ordered that certain rules and orders be established and recorded as the rules respecting the modes of trial and the conduct of business in suits at law and equity.<sup>11</sup>

**§ 969. New Jersey Chancery Court Rules—Cited.** The Chancery Court of New Jersey has from time to time promulgated equity rules and amended those already in force.

See 36 N. J. Equity. See also 42 Atl. VII.

37 N. J. Equity. 24 Atl. XX.

41 N. J. Equity. 72 Atl. V.

43 N. J. Equity. 71 Atl. V.

44 N. J. Equity. 14 Atl. III.

47 N. J. Equity. 6 Atl. III.

3 Atl. III.

**§ 970. Pennsylvania Supreme Court Chancery Rules—Cited.** Rules of Equity Practice of Pennsylvania as revised and amended by the judiciary in 1911. Published in Purdon's Digest (Pennsylvania, 13th ed., Supplement Laws and Annotations to January 1, 1912; subject, Equity Rules, p. 250. Beginning with rule 74 are found a number of rules pertaining to interlocutory orders and therefore directly affecting receivership.

<sup>11</sup> Found in 70 Atl. XII.

# CHAPTER XXXV

## STATUTES AFFECTING RECEIVERSHIPS <sup>1</sup>

### ANALYSIS

#### NATURE AND CONSTRUCTION OF STATUTES

- § 971. History and Comment on Statutes Governing Receivers.
- § 972. Receivers Governed by Statutes, Usages and Rules of Equity.
- § 973. Statutes Abrogating Chancery Jurisdiction Strictly Construed.
- § 974. Statutory Rights Enforced Extraterritorially, Ex Comitatus.
- § 975. Statute of Limitations Does Not Run in Favor of Receiver.
- § 976. State Statutes Governing Receiver's Certificates Binding under State Practice.
- § 977. State Statutes Governing Receiver's Certificates Not Binding under Federal Practice.

#### GENERAL RECEIVERSHIP STATUTES

- § 978. History and Comment on General Receivership Statutes
- § 979. Alabama General Receivership Statutes—Cited.
- § 980. Arizona General Receivership Statutes—Cited.
- § 981. Arkansas General Receivership Statutes—Cited.
- § 982. California General Receivership Statutes—Cited.
- § 983. Colorado General Receivership Statutes—Cited.
- § 984. Connecticut General Receivership Statutes—Cited.
- § 985. Georgia General Receivership Statutes—Cited.
- § 986. Idaho General Receivership Statutes—Cited.
- § 987. Indiana General Receivership Statutes—Cited.
- § 988. Iowa General Receivership Statutes—Cited.
- § 989. Kansas General Receivership Statutes—Cited.
- § 990. Kentucky General Receivership Statutes—Cited.
- § 991. Maryland General Receivership Statutes—Cited.
- § 992. Minnesota General Receivership Statutes—Cited.
- § 993. Mississippi General Receivership Statutes—Cited.
- § 994. Missouri General Receivership Statutes—Cited.
- § 995. Montana General Receivership Statutes—Cited.
- § 996. Nebraska General Receivership Statutes—Cited.
- § 997. Nevada General Receivership Statutes—Cited.
- § 997½. New York General Receivership Statutes—Cited.
- § 998. Ohio General Receivership Statutes—Cited.
- § 999. Oklahoma General Receivership Statutes—Cited.
- § 1000. South Dakota General Receivership Statutes—Cited.
- § 1001. Tennessee General Receivership Statutes—Cited.

<sup>1</sup> For judicature and chancery acts, judicial and civil codes which affect receivers, see ch. XXXII.

## STATUTES GOVERNING RECEIVERS OF CORPORATIONS

- § 1002. Texas General Receivership Statutes—Cited.
- § 1003. History and Comment on Statutes Governing Receivers of Corporations.
- § 1004. Arkansas Statutes—Receivers of Corporations.
- § 1005. California Statutes—Receivers of Corporations.
- § 1006. Colorado Statutes—Receivers of Corporations.
- § 1007. Connecticut Statutes—Receivers of Corporations.
- § 1008. District of Columbia Statutes—Receivers of Corporations.
- § 1009. Georgia Statutes—Receivers of Corporations.
- § 1010. Idaho Statutes—Receivers of Corporations.
- § 1011. Illinois Statutes—Receivers of Corporations.
- § 1012. Iowa Statutes—Receivers of Corporations.
- § 1013. Indiana Statutes—Receivers of Corporations.
- § 1014. Kansas Statutes—Receivers of Corporations.
- § 1015. Maine Statutes—Receivers of Corporations.
- § 1016. Maryland Statutes—Receivers of Corporations.
- § 1017. Massachusetts Statutes—Receivers of Corporations.
- § 1018. Michigan Statutes—Receivers of Corporations.
- § 1019. Minnesota Statutes—Receivers of Corporations.
- § 1020. Missouri Statutes—Receivers of Corporations.
- § 1021. Montana Statutes—Receivers of Corporations.
- § 1022. Nebraska Statutes—Receivers of Corporations.
- § 1023. New Hampshire Statutes—Receivers of Corporations.
- § 1024. New York Statutes—Receivers of Corporations.
- § 1025. Nevada Statutes—Receivers of Corporations.
- § 1026. Ohio Statutes—Receivers of Corporations.
- § 1027. Pennsylvania Statutes—Receivers of Corporations.
- § 1028. Rhode Island Statutes—Receivers of Corporations.
- § 1029. South Carolina Statutes—Receivers of Corporations.
- § 1030. South Dakota Statutes—Receivers of Corporations.
- § 1031. Tennessee Statutes—Receivers of Corporations.
- § 1032. Texas Statutes—Receivers of Corporations.
- § 1033. Utah Statutes—Receivers of Corporations.
- § 1034. Vermont Statutes—Receivers of Corporations.
- § 1035. Washington Statutes—Receivers of Corporations.
- § 1036. West Virginia Statutes—Receivers of Corporations.
- § 1037. Wisconsin Statutes—Receivers of Corporations.
- § 1038. Wyoming Statutes—Receivers of Corporations.

STATUTES AUTHORIZING TRUST AND OTHER CORPORATIONS TO  
ACT AS RECEIVERS

- § 1039. History and Comment on Statutes Authorizing Trust and Other Corporations to Act as Receivers.
- § 1040. District of Columbia Statutes—Trust Company to Act as Receiver.
- § 1041. Florida Statutes—Trust Company to Act as Receiver.
- § 1042. Georgia Statutes—Trust Company to Act as Receiver.

- § 1043. Idaho Statutes—Trust Company to Act as Receiver.
- § 1044. Illinois Statutes—Trust Company to Act as Receiver.
- § 1045. Maryland Statutes—Trust Company to Act as Receiver.
- § 1046. Minnesota Statutes—Trust Company to Act as Receiver.
- § 1047. Missouri Statutes—Trust Company to Act as Receiver.
- § 1048. Montana Statutes—Trust Company to Act as Receiver.
- § 1048½. New York Statutes—Trust Company to Act as Receiver.
- § 1049. Ohio Statutes—Trust Company to Act as Receiver.
- § 1050. Pennsylvania Statutes—Trust Company to Act as Receiver.
- § 1051. Rhode Island Statutes—Trust Company to Act as Receiver.
- § 1052. South Dakota Statutes—Trust Company to Act as Receiver.
- § 1053. Texas Statutes—Trust Company to Act as Receiver.
- § 1054. Vermont Statutes—Trust Company to Act as Receiver.
- § 1055. Washington Statutes—Trust Company to Act as Receiver.
- § 1056. West Virginia Statutes—Trust Company to Act as Receiver.
- § 1057. Wisconsin Statutes—Trust Company to Act as Receiver.
- § 1058. Wyoming Statutes—Abstract and Loan Company as Receiver.

#### PARTNERSHIP RECEIVERSHIP STATUTES

- § 1059. History and Comment on Statutes Providing for Receivers of Partnership Property.
- § 1060. Colorado Statutes—Receivers of Partnership Property.
- § 1061. Connecticut Statutes—Receivers of Partnership Property.
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- § 1063. Ohio Statutes—Receivers of Partnership Property.
- § 1064. Rhode Island Statutes—Receivers of Joint Estates.

#### RAILWAY RECEIVERSHIP STATUTES

- § 1065. History and Comment on English Statutes Permitting Receivers of Railways.
- § 1066. English Statutes Permitting Receivers of Railways (Text).
- § 1067. History and Comment on United States Statutes Governing Receivers of Railways.
- § 1068. United States Statutes—Receivers of Railways Subject to Interstate Commerce Commission (Text).
- § 1069. History and Comment on Railway Receivership Statutes of Various States.
- § 1070. Colorado—Receivers of Railways.
- § 1071. Connecticut—Receivers of Railways.
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## NATURE AND CONSTRUCTION OF STATUTES

§ 971. **History and Comment on Statutes Governing Receivers.** The usages and rules of equity pertaining to receivers and the appointment of receivers date back to the time of Queen Elizabeth. Equity courts were instituted to do justice and equity to litigants where the common law offered no remedy or a remedy which was inadequate. What was equity and justice in the time of Queen Elizabeth is equity and justice today with few exceptions. The usages and rules of equity which obtain today have been developed and invented by the greatest chancellors and judges of England and America. In the main these usages and rules of equity as they have been handed down to us and developed and promulgated by chancery courts from time to time have been sufficient to cover the questions arising in receivership cases without the necessity of statutes on the subject.

Until the English Railways Act of 1867 providing for the appointment of receivers of railways, few if any acts were passed by Parliament restricting or enlarging the powers of courts with equity jurisdiction to appoint receivers. However, following the English Railways Act came the English Judicial

ture Act of 1873,<sup>2</sup> enlarging to a certain degree the scope of appointment and the courts which might appoint receivers. Ontario, Canada, has passed a similar act.

The United States congress has passed few laws restricting or cutting down the powers of United States courts to appoint receivers. Congress has, however, inserted certain provisions of the Judicial Code of the United States,<sup>3</sup> affecting receivership, and also passed some little legislation concerning suits by or against receivers, and the extension of certain other congressional acts to receiverships. This legislation we have thought best to print so far as it concerns receiverships.<sup>4</sup>

As to legislation by the states concerning receivership much has been passed, some merely codifying the usages and rules of equity pertaining to the appointment of receivers and receivership generally, some enlarging and extending the usages and rules of equity. Other legislation purports to restrict the power of appointment and make more safe the rights of litigants and parties interested in the property.

The legislation in the several states take the shape of: First, chancery or equity acts affecting receiverships indirectly or directly. Second, civil and judicial codes having provisions for general receiverships. Third, sundry statutes providing for the appointment of receivers in supplemental proceedings, proceedings in aid of execution, attachment proceedings, etc. Fourth, limitation on the powers of receivers and statements of the duties of receivers. Fifth, receivers of corporations and railways.

It is impossible and not advisable to report in this work the state statutes on receiverships in full. Nevertheless, such legislation is most important and many a lawsuit has been hard fought on questions of the interpretation of these statutes. Naturally many statutes in the different states have been copied from sister states, and much legislation, although not copied, is substantially alike in different states. When a

<sup>2</sup> See ch. XXXII.

<sup>3</sup> See ch. XXXII.

<sup>4</sup> See this chapter under "Railway Receivership Statutes," sec. 1065, et seq., *infra*.

state adopts a statute of another state, it is presumed that the construction given such statute is also adopted.<sup>4a</sup> We have endeavored to group these various state statutes under such headings as will indicate the purpose or purposes they purport to accomplish. Instead of reporting them in full, we have in most instances cited them, indicated where they may be found and at times briefly commented thereon.

**§ 972. Receivers Governed by Statutes and Usages and Rules of Equity.** Statutes are found in England and in the United States indicating in what courts and in what cases receivers will be appointed. The English Judicature Act<sup>5</sup> provides that certain courts may appoint a receiver whenever it appears just or convenient. The introduction of that section of the Judicature Act does not curtail the power of the court to grant injunctions or to appoint receivers; it enlarges it. It enables the court to appoint receivers when in practice it never did so, even if it formerly had the jurisdiction to do so.<sup>5a</sup> Some inconvenient rules formerly observed have been very properly relaxed, yet the principles on which the jurisdiction of the court of chancery rested have not been changed.<sup>6</sup>

The comment which was made concerning the receivership portion of the English Judicature Act may, generally speaking, be made concerning the various state general receivership statutes which provide when receivers may be appointed. Said the Supreme Court of Kentucky, concerning Kentucky's General Receivership Statute, as follows: "The so-called Receivership Statutes may be regarded as defining and regulating and possibly enlarging the powers of courts of equity to appoint receivers."<sup>6a</sup>

<sup>4a</sup> Johnson v. Garner (1916), 233 Fed. 756.

<sup>5</sup> Judicature Act (1873), 36 and 37 Vict., c. 66, s. 25 (8).

<sup>5a</sup> Cummins v. Perkins (1899), 1 Ch. 16.

<sup>6</sup> Holmes v. Millage (1893), 1 Q. B. 551, C. A.

<sup>6a</sup> Douglas v. Cline, 12 Bush (Ky.) 608, at 623. The Kentucky Code

containing the General Receivership Statutes under the heading "Provisional Remedies" was passed soon after the New York Code, and its provisions just referred to are almost a duplicate of the first New York general receivership statute. Many other states have done the same thing as did Kentucky.

General statutes concerning receiverships should be construed in the light of the settled doctrine of courts of equity respecting the powers of receivers.<sup>7</sup>

Because most states of the United States have enacted statutes indicating generally in what cases receivers may be appointed, it is sometimes said that in those states receivers are statutory. This is true when applied to receivers to wind up or liquidate a corporation, because without such statutes courts have no power to wind up the corporation. The state by sovereign power creates a corporation and only by express statutory power given to the courts can the courts destroy the corporation. However, as to receivers generally, a court of equity irrespective of statute possesses the power to appoint a receiver *pendente lite* to preserve property. In some states, notably Indiana,<sup>8</sup> Ohio,<sup>9</sup> and others, the statutes covering general receivers after enumerating cases in which a receiver may be appointed, provide further in substance as follows: "In all cases in which receivers heretofore have been appointed by the usages of equity."<sup>10</sup>

This residuary clause found in so many general receivership statutes indicates the caution with which the legislatures approached the subject of receivership, and the care with which they guarded the power to appoint receivers as laid down by chancery courts since the time of Queen Elizabeth.

**§ 973. Statutes Abrogating Chancery Jurisdiction Strictly Construed.** We find in England parliamentary acts, in America congressional acts, and in our states legislative acts, on the subject of receivers. What effect have these acts on the usages and rules of equity on the subject of receivers? It is impossible to lay down a rule covering the construction of all these statutes, but it may be said that many of them simply

<sup>7</sup> *Marion Trust Co. v. Blish* (1908), 84 N. E. 814, 170 Ind. 686.

<sup>8</sup> *Burns' Annotated Indiana Statutes* (1914), sec. 1279-seventh.

<sup>9</sup> Ohio General Code, secs. 11894, et seq.

<sup>10</sup> Ohio General Code (1910), sec. 11894, subsec. 6; taken from Ohio Civil Code of 1851, sec. 253, subsec. 6; see Code of Procedure of South Carolina, 265, cited 84 S. C. 220.

codify the usages and rules of equity, and statutes which abrogate or abridge chancery jurisdiction as it is laid down by chancery courts generally are to be strictly construed, and if the restrictive purpose is not clear it will not be extended by construction.<sup>11</sup>

It must also be noted that when the legislature has passed a law lacking in universality equity may not generally supply the deficiency.<sup>12</sup>

**§ 974. Statutory Rights Enforced Extraterritorially Ex Comitatus.** Said Knowlton, J., of Supreme Court of Massachusetts:<sup>13</sup> "It is a familiar law that statutes do not extend, *ex proprio vigore*, beyond the boundaries of the state in which they are enacted. If they are merely penal, they can not be enforced in another state. If they furnish merely a local remedy, for the invasion of a recognized right which is protected elsewhere in other ways, they can not be given effect in another jurisdiction." *Richardson v. New York C. R. Co.*, 98 Mass. 85-89.

The fundamental question is whether there is a substantive right originating in one state, and a corresponding liability which follows the person against whom it is sought to be enforced in another state. Such a right arising under the common law is enforceable everywhere. Such a right arising under a local statute will be enforced *ex comitatus* in another state unless there is good reason for refusing to enforce it. It will be enforced not because of the existence of the statute, but because it is a right which the plaintiff legitimately acquired and which still belongs to him. If the statute creating the right is against the policy of the law of the neighboring state, that is a sufficient reason for refusing to enforce the right there. In the neighboring state, in such a case, it will not be consid-

<sup>11</sup> *Black, Receiver, v. Boyd* (1893), 50 Ohio St. 46, at 54; *Chapman v. American Surety Co.* (1914), 261 Ill. 594, at 604; *Farmers Union v. Coweta* (1909), 133 Ga. 132.

<sup>12</sup> *Massey v. Camden & Trenton Ry. Co.* (1911), 78 N. J. Eq. 539, at 543.

<sup>13</sup> *Howarth v. Lombard* (1900), 175 Mass. 570, 49 L. R. A. 302, at 304.

ered a right. If the enforcement of a statutory right in a neighboring state in the manner proposed will work injustice to its citizens, considerations of comity do not require the recognition of it by the courts of that state. If the right, by the terms of the statute creating it, is to be enforced by prescribed proceedings within the state the right is limited by the statute, and can only be enforced in accordance with the statute. If it be such a kind that, with a due regard for the interests of the parties, a proper remedy can be given only in the jurisdiction where it is created, it will not be enforced elsewhere. But if there is a substantive right of a kind which is generally recognized, courts, through comity, ought to regard it and enforce it as well when it arises under a statute of another state as when it arises at common law, unless there is some good reason for disregarding it. These seem to be the reasons and principles which govern the action of the court in cases of this kind.<sup>14</sup>

**§ 975. Statute of Limitations Does Not Run in Favor of Receiver.** The position of a receiver is one in which liability to account would not be easily barred and so long as he is living he must be held to have been a trustee of the money received, therefore the defense of the statute of limitations is not a bar to a claim against him. Money not accounted for and due from a receiver under the court is by his recognizance made a debt of record, although the balance due has not been ascertained as to any money due from a receiver and not brought into account either by mistake or though fraud, the receiver would be a trustee for the persons entitled to that money.<sup>15</sup>

**§ 976. State Statutes Governing Receiver's Certificates Binding under State Practice.** Receivers' certificates are evidences of indebtedness, they are not negotiable and can stand no higher

<sup>14</sup> Howarth v. Lombard (1900).  
175 Mass. 570, 49 L. R. A. 301, at  
304, and cases cited.

<sup>15</sup> Seagram v. Tuck (1881). 18  
Ch. D. 299; see *In re Cornish* (1896).  
1 Q. B. 99.

than the debts of which they are the representatives.<sup>16</sup> The holders of the certificates are charged with notice of the proceedings in which the certificates are issued and, therefore, the statutes of the state or federal government concerning the "application of funds in hand of receiver and claims preferred" must be consulted.

Texas has a very lengthy statute on the subject.<sup>17</sup> Many other states have statutes concerning the payment of labor claims when property goes into the hands of a receiver.<sup>18</sup>

**§ 977. State Statutes Governing Receiver's Certificates Not Binding under Federal Practice.** The legislature of a state has no more authority to prescribe rules of procedure for courts of the United States, nor to limit the effect of judgments of such courts rendered in the exercise of their constitutional powers than congress has to prescribe rules for the state courts, or to place limitations upon their judgments within the bounds of the states.<sup>19</sup>

Maxie, United States District Judge, said, discussing the Texas statute of distribution by a receiver: "We do not think that either of the laborers' lien law or art. 1472 (2135 Vernon Sayles' Texas Civil Statutes [1914]), of the Revised Statutes of Texas, regulating the distribution of funds that may come into the hands of a receiver of a state court, should or can be construed to have application to the classification and priority of liens accruing against receivers appointed by the courts of the United States. The claims in question were those of employes performing work in the immediate service of receivers duly appointed by a court of the United States having jurisdiction of the cause and their relative rank and classification of pay-

<sup>16</sup> *Fidelity Insurance, etc., Co. v. Shenandoah* (1889), 42 Fed. 377.

<sup>17</sup> Vernon Sayles' Texas Civil Statutes (1914), art. 2135 (1472).

<sup>18</sup> Laws of New York (1885), ch. 376; see *People v. Remington*

(1887), 45 Hun, 329; *Matter of Stryker* (1899), 158 N. Y. 526.

<sup>19</sup> *Fordyce v. Du Bose* (1894), 87 Tex. 78, at 82; quoted with approval, *First Nat. Bk. v. Ewing* (1900), 103 Fed. 194.

ment were matters to be determined by the court in accordance with the general principles of equity jurisprudence.<sup>20</sup>

#### GENERAL RECEIVERSHIP STATUTES

**§ 978. History and Comment on General Receivership Statutes.** A few states still retain their chancery courts as independent tribunals, notably New Jersey, Delaware, Alabama, Mississippi, and Tennessee. Such states besides retaining the old forms of equity pleading have interfered very little with chancery practice as it was handed down to them from England and as it has been developed free of statute in England and in this country. A few statutes are found in those chancery court states applicable to "General Receiverships," for instance in Alabama,<sup>21</sup> Code of Alabama, ch. 131.

The states which have not adopted codes fusing the suit at common law and the action in equity into one civil action and which have the mixed practice of law and equity before the same judge like the practice in the United States courts, are: Maine, New Hampshire, Vermont, Rhode Island, Pennsylvania, Maryland, Virginia, West Virginia, Florida, Illinois, Michigan, (New Mexico), and the District of Columbia.

These so-called mixed practice states and Massachusetts, Maryland and Georgia have not generally passed statutes called "General Receivers' Statutes," but have left such appointment as a rule to the usages and rules of equity, with a few desultory statutes on the subject of notice, bond, oath, etc.

Most code states have statutes called "General Receivership Statutes" or words to that effect, indicating what courts and in what cases receivers may be appointed. Many, but not all, of these statutes after stating in what cases receivers may be appointed add what may be called a saving or residuary clause stating that a receiver may be appointed by certain courts or a

<sup>20</sup> First Nat. Bk. v. Ewing (1900), 103 Fed. 168, at 194: see Guarantee Trust Co. v. Galveston City Ry. Co. (1901), 107 Fed. 311.

<sup>21</sup> Code of Alabama, ch. 131, "Receivers," secs. 5726-5731.



judge thereof "In all other cases in which receivers heretofore have been appointed by the usages of equity."<sup>22</sup>

The pioneer of all these "General Receivership Statutes" found in the various state civil codes is found in the New York Civil Code of 1848, sec. 244, which was as follows:<sup>23</sup>

"A receiver may be appointed:

"A. Before judgment, on the application of either party, when he establishes an apparent right to property which is the subject of the action, and which is in the possession of an adverse party; and the property, or its rents and profits, are in danger of being lost, or materially injured or impaired; except in cases where judgment upon failure to answer may be had without application to the court.

"2. After judgment, to carry the judgment into effect.

"3. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply his property in satisfaction of the judgment.

"4. In cases provided in this Code, and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights; and in like cases of the property within this state of foreign corporations.

"5. In such other cases as are now provided by law, or may be in accordance with the existing practice, except as otherwise provided in this act."

A number of states followed New York in the matter of adopting a code of civil procedure and in the matter of passing statutes marking out general rules governing the appointment of receivers. Naturally a great resemblance is to be found in the various civil codes which have been patterned after the New York Code. We do not report these various general receiv-

<sup>22</sup> Ohio General Code (1910), sec. 11894 (R. S. 5587). New York general receivership statutes as originally passed, New York Original Code, 244. See Van Santvoord's

Equity Practice (Albany, 1860), p. 383.

<sup>23</sup> Found in Van Santvoord's Equity Practice, p. 383.

ership statutes but we indicate where they are to be found and frequently comment on them as follows:

**§ 979. Alabama General Receivership Statutes—Cited.** Reported in Code of Alabama (1907), ch. 131, "Receivers," secs. 5726-5731. Although Alabama has its chancery courts as distinct from the law courts, nevertheless it has its code with provisions governing the appointment of receivers.

**§ 980. Arizona General Receivership Statutes—Cited.** Arizona Civil Code (1913), ch. XXVII, secs. 672 et seq., "Appointment of Receivers."

Rules of equity shall govern as follows: "In the matters relating to the appointment of receivers and to their powers, duties and liabilities, and to the power of the court in relation thereto, the rules of equity shall govern whenever the same are not inconsistent with the provisions of this chapter."<sup>24</sup>

**§ 981. Arkansas General Receivership Statutes—Cited.** Digest of the Statutes of Arkansas (1904), ch. 125, p. 1317, under "Pleadings and Practice of Receivers," (s), secs. 6342 et seq.

A receiver under the Arkansas statutes "shall possess all the powers which a receiver in a court of chancery can have or possess, unless otherwise provided for in this act."<sup>25</sup>

**§ 982. California General Receivership Statutes—Cited.** Code of Civil Procedure of California, ch. V, "Receivers," sec. 564. General receivership statutes of California are substantially like the New York statutes as originally passed in 1848. California statutes follow generally the form and substance of the general receivership statutes found today in Indiana<sup>26</sup> and Ohio.<sup>27</sup>

<sup>24</sup> Revised Statutes of Arizona, ch. XXVII, "Appointment of Receiver," sec. 681.

<sup>25</sup> Digest of the Statutes of Arkansas (1904), ch. 125, "Receivers." (s), sec. 6345.

<sup>26</sup> Burns' Annotated Indiana Statutes, Revision of 1914, sec. 1279.

<sup>27</sup> Ohio General Code, sec. 11894 et seq.

§ 983. **Colorado General Receivership Statutes—Cited.** "Receivers Appointed, When," Colorado Code, sec. 179, sec. 2. These statutes follow very closely the New York statute as it now exists.<sup>28</sup>

§ 984. **Connecticut General Receivership Statutes—Cited.** General Statutes of Connecticut, ch. 72, "Receivers," secs. 1044 et seq.

§ 985. **Georgia General Receivership Statutes—Cited.** Code of Practice of Georgia, "Receivers," secs. 5475 to 5489, inclusive.

§ 986. **Idaho General Receivership Statutes—Cited.** Idaho Revised Code (1906), ch. V, "Receivers," secs. 4329 et seq. Resembles Indiana and Ohio statutes.

§ 987. **Indiana General Receivership Statutes—Cited.** Indiana was one of the first states to follow, about 1850, with a code patterned after the New York pioneer code. The Indiana Code contained statutes on the subject of receivers patterned after the New York General Receivership Statutes as originally passed.<sup>29</sup> These statutes have remained with little change and are now to be found reported in Burns' Annotated Indiana Statutes, Revision of 1914, secs. 1279 et seq.

§ 988. **Iowa General Receivership Statutes—Cited.** Code of Iowa, Annotated (1897), and amendments, secs. 3822 et seq.

§ 989. **Kansas General Receivership Statutes—Cited.** General Statutes of Kansas (1909), sec. 5860. Resembles Indiana<sup>30</sup> statutes.

<sup>28</sup> See New York statute found in Parson's New York Pocket Code Civil Procedure Annotated (1914), secs. 713 et seq.

<sup>29</sup> See reported in Van Santvoord's Equity Practice, p. 383.

<sup>30</sup> See Indiana statute found in Burn's Annotated Indiana Statutes, Revision of 1914, secs. 1279 et seq.

**§ 990. Kentucky General Receivership Statutes—Cited.** Kentucky Code (1913), secs. 298 et seq. Resembles Indiana <sup>31</sup> statutes. One of the first states to adopt a code.

**§ 991. Maryland General Receivership Statutes—Cited.** Annotated Code of Maryland (1911), Vol. I, p. 418. Maryland having a chancery court, statutes in the matter of receivership are not very lengthy.

**§ 992. Minnesota General Receivership Statutes—Cited.** Revised Laws of Minnesota (1905), secs. 4262 et seq.

**§ 993. Mississippi General Receivership Statutes—Cited.** Receivers appointed by Chancery Act, Mississippi Code of 1906, "Chancery Courts," secs. 627 et seq. Mississippi is one of the few states having a chancery court which has provided so-called "General Receivership Statutes."

**§ 994. Missouri General Receivership Statutes—Cited.** Missouri Code of Civil Procedure, sec. 753. Missouri Annotated Statutes (1906), Vol. I, sec. 753.

**§ 995. Montana General Receivership Statutes—Cited.** Revised Code of Montana (1907), ch. VI, "Receivers," secs. 6698, et seq. Statutes resemble Indiana statutes.<sup>32</sup>

**§ 996. Nebraska General Receivership Statutes—Cited.** Code of Civil Procedure, ch. V, "Receivers," Compiled Statutes of Nebraska (1911), secs. 6816 et seq.

**§ 997. Nevada General Receivership Statutes—Cited.** Civil Practice Code, ch. 25, "Receivers," sec. 5193. Revised Laws of Nevada (1912). Statute resembles Indiana statute.<sup>33</sup>

**§ 997½. New York General Receivership Statutes—Cited.** Parson's New York Pocket Code Civil Procedure, sec. 713.

<sup>31</sup> See note 30 above.

<sup>32</sup> Burns' Annotated Indiana Statutes, Revision of 1914, secs. 1279 et seq.

<sup>33</sup> See Indiana statute found in Burns' Annotated Indiana Statutes, Revision of 1914, secs. 1279 et seq.

**§ 998. Ohio General Receivership Statutes—Cited.** General Code of Ohio, secs. 11894 et seq. These statutes were originally part of the original Ohio Civil Code adopted in 1851, and copied directly or indirectly from the first New York Code and the Indiana Code as it existed at that time.

**§ 999. Oklahoma General Receivership Statutes—Cited.** Under the Oklahoma Civil Code provision is made for the appointment of a receiver, art. XII. Receivers and other provisional remedies, arts. 5772 et seq. These code provisions follow along the lines of the provisions found in the New York Code as originally passed and now found in the Ohio General Code and in Indiana and other code states.

**§ 1000. South Dakota General Receivership Statutes—Cited.** Compiled Laws of South Dakota (1908). Code of Civil Procedure, secs. 227 et seq.

**§ 1001. Tennessee General Receivership Statutes—Cited.** Tennessee has its chancellors and its chancery court and as usually happens in such a case no general receivership statutes are found as in New York and Indiana for instance. The Code of Tennessee,<sup>34</sup> however, provides for the ex officio powers of judges and chancellors who may appoint receivers. In addition secs. 6268 and 6269 of said Tennessee Code provide specifically for receivers and receiver's bond.

**§ 1002. Texas General Receivership Statutes—Cited.** "Receivers," Vernon Sayles' Texas Civil Statutes (1914), arts. 2128 [1465] et seq. Texas has probably the most extensive general receivership statutes of any found in the United States. Although these statutes follow generally the form laid down by the New York statutes as originally passed in 1848,<sup>35</sup> nevertheless the Texas statutes have developed way beyond those original

<sup>34</sup> Thompson's Shannon's Code of Tennessee (1917), sec. 5750.

<sup>35</sup> Reported in Van Santvoord's Equity Practice, p. 383.

New York statutes and way beyond the New York statutes on general receivership found today.<sup>36</sup> The Texas statutes codify many of the usages and rules of equity and they are evidently intended to protect the litigants and claimants against improper actions by receivers or courts appointing such receivers.

#### STATUTES GOVERNING RECEIVERS OF CORPORATIONS

§ 1003. **History and Comment on Statutes Governing Receivers of Corporations.** The English courts never seemed to have hesitated to appoint a receiver of a corporation when a proper case was presented to them, although statutes were necessary and have been passed in England providing for the winding up of corporations and the appointment by the court of liquidators. The American state courts have wrestled with the question whether or not courts of equity have inherent power to appoint a receiver of a corporation, and in 1817 Chancellor Kent of New York held that the jurisdiction of chancery did not extend to the sequestration of the property of a corporation by means of a receiver or to the winding up of its affairs or to control or restrain the usurpation of franchises by corporate bodies or by persons claiming without right to exercise corporate powers.<sup>37</sup>

The New York legislature in 1825 by act, chapter 325 of the laws of that year, conferred jurisdiction upon the court of chancery to sequester the property of a corporation upon the application of a judgment creditor and to appoint a receiver of its property. The United States courts on the other hand took the stand from the very beginning that courts of equity had inherent power to appoint a receiver of a corporation, although such a court without statutory power could not wind up the corporation itself which was created by the legislature.

The New York act of 1825 has been amended from time to time and New York has passed a number of additional acts

<sup>36</sup> Reported in Parsons' New York Pocket Code of Civil Procedure, Annotated (1914), secs. 713 et seq.

<sup>37</sup> Attorney General v. Utica Ins. Co. (1817), 2 John. Ch. 371; see sec. 214, Vol. I, supra.

providing for and governing the appointment of receivers of corporations.

The New York statutes as they exist today providing for and governing the appointment of receivers of corporations<sup>38</sup> are probably more in detail and more extensive than those of any other state, and many of their features could be copied by other states with great advantage. There is some uncertainty now in some states even as to the right of a court of equity to appoint a receiver without statute, and in addition because some state statutes on the subject of receivers of corporations are subject to misinterpretation<sup>39</sup> there is frequently uncertainty as to when a receiver of a corporation can be appointed.

In 1848, when the New York Civil Code of Procedure was enacted, there were on the statute books of New York several special statutes providing for the appointment of a receiver of a corporation under certain circumstances, yet not so extensive as the present statutes. The New York Civil Code of 1848, when it provided generally for the appointment of a receiver by the New York courts, provided in subsec. 4, of sec. 244, of the original Code as follows:

“4. In cases provided in this Code and by special statutes, where a corporation has been dissolved or is insolvent or in imminent danger of insolvency or has forfeited its corporate rights and in like cases of the property within this state of foreign corporations.”

This subsec. 4 of the old New York Civil Code has been omitted from the present Code and sec. 713 of the New York Code of Civil Procedure as of 1914, contains no such subsec. 4 because the appointment of receivers is so amply provided for in the Consolidated Laws, ch. XXIII.<sup>40</sup>

Few if any states have extensive special statutes like New York providing specifically and in great detail for the appoint-

<sup>38</sup> Chapter 23 of the Consolidated Laws of New York, cited at length in this chapter, sec. 1024, *infra*.

<sup>39</sup> See Ohio General Code, sec. 11894, subsec. 5, which refers the reader to special Ohio statutes which do not exist.

<sup>40</sup> Laws 1909, ch. 28, in effect February 17, 1909; Birdseye, Cumming and Gilbert's Consolidated Laws of New York, Annotated, Vol. II, pp. 1963, et seq.

ment of a receiver in all the cases mentioned in said subsec. 4 of the original New York Code of 1848, sec. 244; and yet many states of the Union when they adopted their civil codes copied verbatim or in substance all the provisions of the New York Civil Code, sec. 244, including subsec. 4 just mentioned.<sup>41</sup>

The result is when we read this subsec. 4 copied into other state codes and we find no special statute in such states corresponding to the statute referred to by this subsec. 4 of New York's original Code, we are at a loss to understand this subsec. 4 when copied by other states. Lawyers and courts have accordingly had great difficulty in interpreting this subsec. 4 or the substance of it when found in codes other than the New York Code.

The Ohio general receivership statutes have copied the substance of this old subsec. 4, of sec. 244, New York Code, as originally passed.<sup>42</sup> The Ohio General Code today contains this subsec. 4 in substance<sup>43</sup> with a like reference to special statutes "when a corporation \* \* \* is insolvent or is in imminent danger of insolvency." In fact such special statutes do not exist in Ohio, and we have all kinds of conflicting Ohio decisions on the subject of insolvency of corporation as ground for the appointment of a receiver.

Kansas<sup>44</sup> has exactly the same provision as has Ohio, but Kansas has in fact a special statute providing for a receiver of insolvent corporations.<sup>45</sup>

The Indiana, Idaho and other civil codes have followed the old New York statute on the subject of receivers, but have changed the old New York subsec. 4, of sec. 244, to suit the exigencies of their states, the substance of their statutes being as follows: "Fifth. When a corporation has been dissolved, or

<sup>41</sup> Ohio Civil Code of 1851, sec. 253, now Ohio General Code, sec. 11894, subsec. 5.

<sup>42</sup> Ohio Civil Code (1851), sec. 253, subsec. 5.

<sup>43</sup> Now Ohio General Code, sec. 11894, subsec. 5.

<sup>44</sup> Kansas Civil Code of Procedure, sec. 243, subsec. 5; General Statutes of Kansas (1909), sec. 5860, subsec. 5.

<sup>45</sup> General Statutes of Kansas (1909), sec. 1728.



is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights.”<sup>46</sup>

Most states have statutes providing for the dissolution of corporations and for the appointment of a receiver to take possession of and to take title to the property of the dissolved corporation. Some states instead of providing for a receiver to take charge of the assets of a dissolved corporation or a corporation which has forfeited its charter, provide for trustees to take charge of such property.<sup>47</sup>

**§ 1004. Arkansas Statutes—Receivers of Corporations.** Receiver of corporation under proper orders of court is vested with title to property of corporation.<sup>48</sup> Digest of the Statutes of Arkansas (1904), ch. 125, “Receivers,” sec. 6348.

Receiver of corporation substituted as party. Digest of the Statutes of Arkansas (1904), ch. 125, “Receivers,” (s), sec. 6349.

**§ 1005. California Statutes—Receivers of Corporations.** Appointment of receivers upon dissolution of corporation. California Code of Civil Procedure, ch. V, “Receivers,” sec. 565.

**§ 1006. Colorado Statutes—Receivers of Corporations.** Dissolution of corporation and appointment of receiver. Liability of stockholders upon forfeiture of charter—receiver. Court-right’s Colorado Statutes (1914), sec. 900.

**§ 1007. Connecticut Statutes—Receivers of Corporations.** Receiver of corporation before dissolution. General Statutes of Connecticut, ch. 72, “Receivers,” sec. 1046.

Application for dissolution. General Statutes of Connecticut, “General Provisions Concerning Corporations,” ch. 197, sec. 3351 et seq.

<sup>46</sup> Thornton’s Annotated Civil Code of Indiana, pt. 2, p. 1431, sec. 1036; sec. 245 of Code of Indiana, Burns’ Annotated Indiana Statutes, Revision of 1914, Vol. I, sec. 1279, p. 757-6; see Idaho Revised Code, ch. 5, sec. 4329-5.

<sup>47</sup> Compiled Statutes of Nebraska (1911), p. 594, sec. 1996 (62).

<sup>48</sup> Likewise of the property of an individual. Digest of Statutes of Arkansas (1904), ch. 125, “Receivers,” sec. 6350.

**§ 1008. District of Columbia—Receivers of Corporations.** Receiver appointed under voluntary dissolution. Code of Law for the District of Columbia, sec. 773.

Receiver appointed on dissolution by stockholders. Code of Law for the District of Columbia, "Dissolution by Stockholders," sec. 789.

Involuntary dissolution by suit of creditors. Code of Law for the District of Columbia, sec. 795.

**§ 1009. Georgia Statutes—Receivers of Corporations.** Receiver of dissolved corporation; disposition of assets; receiver. Park's Annotated Code of Georgia (1914), sec. 2245.

**§ 1010. Idaho Statutes—Receivers of Corporations.** Receivers of dissolved corporation. Idaho Revised Code (1906), sec. 4329, subsec. 6; also sec. 4330.

Receiver of corporation before dissolution when insolvent or in imminent danger of insolvency, or has forfeited its corporate rights.

**§ 1011. Illinois Statutes—Receivers of Corporations.** Receivers after dissolution decree. Illinois Statutes, Annotated (1906), J. & A., sec. 2442.

Receivers of banks. Illinois Statutes, Annotated, J. & A., Vol. I, p. 658, sec. 683.

Receivers of insurance companies. Illinois Statutes, Annotated, J. & A., Vol. IV, p. 3635, sec. 6685.

**§ 1012. Iowa Statutes—Receivers of Corporations.** Receivers of corporations after dissolution by a court of equity. Code of Iowa, sec. 1640.

Receiver upon dissolution of insurance company. Code of Iowa, secs. 1731, 1777, 1779.

Receiver of insolvent bank. Code of Iowa, sec. 1877.

**§ 1013. Indiana Statutes—Receivers of Corporations.** Receiver when a corporation has been dissolved or is insolvent, or is

in imminent danger of insolvency, or has forfeited its corporate rights. Indiana Code of Civil Procedure, sec. 245, subsec. 6; Thornton's Annotated Civil Code, part 2, sec. 1036; Burns' Annotated Indiana Statutes, Revision of 1914, Vol. I, sec. 1279, p. 757, subsec. 6.

Receiver on expiration of charter of corporation. Burns' Annotated Indiana Statutes (1914), sec. 4062 et seq.

**§ 1014. Kansas Statutes—Receivers of Corporations.** General statute providing for the appointment of receiver of corporation.<sup>40</sup> Kansas Civil Code of Procedure, sec. 243, subsec. 5; General Statutes of Kansas (1909), sec. 5860, subsec. 5.

Receiver of insolvent building and loan association. General Statutes of Kansas (1909), sec. 1883.

Receiver of insolvent corporation. General Statutes of Kansas (1909), sec. 1728.

Receiver on forfeiture of charter of corporation. Kansas General Statutes (1909), sec. 1726.

Receiver of insolvent bank. General Statutes of Kansas (1909), sec. 514 et seq.; also sec. 487 et seq.

Receiver of mutual insurance company. General Statutes of Kansas, sec. 4198 et seq.

**§ 1015. Maine Statutes—Receivers of Corporations.** Receivers upon dissolution of corporation. Revised Statutes of Maine (1903), sec. 77 et seq., sec. 81 et seq.

**§ 1016. Maryland Statutes—Receivers of Corporations.** Receiver appointed upon dissolution of corporation. Annotated Code of Maryland (1911), Vol. I, p. 569.

**§ 1017. Massachusetts Statutes—Receivers of Corporations.** Receiver after dissolution. Revised Laws of Massachusetts, ch.

<sup>40</sup> See sec. 1003, History and Comment on statutes governing receivers of corporations; see sec. 1026, Comment on Ohio statutes on receivers of corporations.

109, secs. 52-57; Supplement to the Revised Laws of Massachusetts, Annotated (Peck), ch. 109, secs. 51-57.

**§ 1018. Michigan Statutes—Receivers of Corporations.**<sup>50</sup> Receivers on dissolution of corporation. Howell's Michigan Statutes, Annotated, 2d Ed., ch. 362, sec. 13560 et seq.

Receivers on voluntary dissolution of corporation. Howell's Michigan Statutes, Annotated, 2d Ed., ch. 362, sec. 13560 et seq.

Sequestration of property of corporation and appointment of receiver. Howell's Michigan Statutes, Annotated, 2d Ed., ch. 360, sec. 13533 et seq.

Receiver in the winding up of mining and manufacturing corporations. Howell's Michigan Statutes, Annotated, 2d Ed., ch. 154, sec. 7851 et seq.

Receiver of Banks. Howell's Michigan Statutes, Annotated, 2d Ed., ch. 102, sec. 6451 et seq.

Receiver of mutual building and loan associations. Howell's Michigan Statutes, Annotated, 2d Ed., ch. 146, sec. 7680.

Receiver of live stock insurance companies. Howell's Michigan Statutes, Annotated, 2d Ed., ch. 162, sec. 8117 et seq.

Receiver for mutual trade insurance company. Howell's Michigan Statutes, Annotated, 2d Ed., ch. 158, sec. 7958 et seq.

Receiver for mutual fire insurance company. Howell's Michigan Statutes, Annotated, 2d Ed., ch. 156, sec. 7913 et seq., 7934 et seq.

Receiver for trust, deposit and security companies. Howell's Michigan Statutes, Annotated, 2d Ed., ch. 104, sec. 6504 et seq.

Receiver for banks. Howell's Michigan Statutes, Annotated, 2d Ed., ch. 102, sec. 6451 et seq.

**§ 1019. Minnesota Statutes—Receivers of Corporations.** Sequestration and appointment of receiver of corporations. Re-

<sup>50</sup> Michigan has the so-called mixed practice of chancery and common law, administered by the same courts, yet the forms are kept distinct; much the same practice as obtains in the federal courts, as in

the federal courts we find no general statutes providing for the appointment of receivers of general corporations, but many statutes covering appointment of particular corporations.

vised Laws of Minnesota (1905), under title "Actions Respecting Corporations," sec. 3173.

**§ 1020. Missouri Statutes—Receivers of Corporations.** Receivers of corporations; appointment of receiver of corporation upon its failure to obey writ of mandamus issued by court. Revised Statutes of Missouri, sec. 993.

Appointment of receiver of a bank. Revised Statutes of Missouri, sec. 1305.

Appointment of receiver of manufacturing company. Revised Statutes of Missouri, sec. 1339.

Appointment of receiver of benevolent, etc., corporation. Revised Statutes of Missouri, sec. 1407.

Appointment of receiver of safe deposit company. Revised Statutes of Missouri, sec. 1569.

Appointment of receiver of bond investment company. Revised Statutes of Missouri, sec. 1539.

**§ 1021. Montana Statutes—Receivers of Corporations.** Revised Codes of Montana, sec. 6698, subsec. 5; Civil Code, sec. 950, subsec. 5.<sup>51</sup>

Corporations may act as receiver. Revised Codes of Montana, sec. 3936; Civil Code, sec. 603.

Receiver of banking corporation. Revised Codes of Montana, sec. 4004.

Receiver on dissolution of corporation. Revised Codes of Montana, secs. 6698, 6700.

**§ 1022. Nebraska Statutes—Receivers of Corporations.** Receiver under the banking law.<sup>51a</sup> Compiled Statutes of Nebraska 747, sec. 48.

<sup>51</sup> See history and comment on statutes governing receivers of corporations, sec. 1003, *supra*.

<sup>51a</sup> Upon dissolution of a Nebraska corporation the directors or

managers acting last before the dissolution shall be trustees of the creditors and stockholders. Compiled Statutes of Nebraska 1911, p. 594, sec. 1996(62).

**§ 1023. New Hampshire Statutes—Receivers of Corporations.** Public Statutes of New Hampshire in force January 1, 1901, ch. 148, "General Powers of Corporations," sec. 22.

**§ 1024. New York Statutes—Receivers of Corporations.** Chapter XXIII of the Consolidated Laws,<sup>52</sup> General Corporation Law:

- ART. 1. Short title; classifications, definitions (§§ 1-3).
- ART. 2. General provisions (§§ 4-44).
- ART. 3. Change of name (§§ 60-65).
- ART. 4. Sale of corporate real property (§§ 70-76).
- ART. 5. Judicial supervision of corporation and of the officers and members thereof (§§ 90-92). Receiver appointed (see § 306, subsec. 1).
- ART. 6. Action for sequestration, action for dissolution and action to enforce individual liability of officers and members of corporations (§§ 100-115).
  - Sec. 104. Temporary receiver.
  - Sec. 105. Additional powers and duties of temporary receiver.
  - Sec. 106. Permanent receiver.
  - Sec. 107. Additional powers and liabilities of permanent receiver.
  - Sec. 108. Application for appointment of receiver. Receiver appointed (see § 306, subsec. 1).
- ART. 7. Action to annul corporation (§§ 130-136).
  - Sec. 134. Injunction and receiver in final judgment. Receiver appointed (see § 306, subsec. 1).
- ART. 8. Action to dissolve moneyed corporation (§§ 150-161).
  - Sec. 150. Temporary injunction and receiver in action against moneyed corporation.
  - Sec. 151. Order to show cause why injunction and receiver should not be permanent.
  - Sec. 152. Inventory and appraisal by receiver.
  - Sec. 153. Conversion of assets into cash by receiver.

<sup>52</sup> Printed in Birdseye, Cumming New York, Annotated, Vol. II, pp. and Gilbert's Consolidated Laws of 1963, et seq.

- Sec. 154. Employment of counsel by receiver.
- Sec. 155. Notice to creditors by receiver.
- Sec. 156. Allowance, rejection and adjustment of claims by receiver.
- Sec. 157. Final settlement and distribution by receiver.
- Sec. 158. Notice of account and accounting by receiver.
- Sec. 159. Proceedings upon accounting.
- Sec. 160. Claims barred after distribution of assets by receiver.
- Sec. 161. Application of article.
- ART. 9. Proceedings for voluntary dissolution of corporation (§§ 170-195).
  - Sec. 182. Temporary receiver.
  - Sec. 183. Application for appointment of receiver.
  - Sec. 191. Permanent receiver.
  - Sec. 192. Appointment of director, trustee or other officer or stockholder as receiver.
  - Sec. 194. Omission, defect or default of receiver.
- ART. 10. Dissolution of stock corporation without judicial proceedings (§§ 220-221).
- ART. 10a. Provisions applicable to temporary and permanent receivers of corporations (§§ 226-227).
  - Sec. 225. Security.
  - Sec. 226. Removal or new bond.
  - Sec. 227. Notice to sureties upon accounting.
- ART. 11. Powers, duties and liabilities of receivers of corporations (§§ 230-278).
  - Sec. 230. Application of this article.
  - Sec. 231. Receiver trustee of property.
  - Sec. 232. Receiver title to property.
  - Sec. 233. Transfer of assets of corporation to receiver
  - Sec. 234. Surety of receiver.
  - Sec. 235. Authority of single receiver.
  - Sec. 236. Authority where there is more than one receiver.
  - Sec. 237. Surviving receivers.
  - Sec. 238. Oath of receiver.
  - Sec. 239. General powers of receiver.
  - Sec. 240. Power of receiver to institute proceedings to recover assets.
  - Sec. 241. Power of receiver in settlement of controversies.
  - Sec. 242. Power of receiver to employ counsel.

- Sec. 243. Power of receiver to hold real property.
- Sec. 244. Power of receiver to recover stock subscriptions.
- Sec. 245. Duty of receiver to convert assets into money.
- Sec. 246. Duty of receiver as to private sales.
- Sec. 247. Duty of receiver to keep accounts.
- Sec. 248. Duty of receiver to serve copy of report upon attorney general and superintendent of banks.
- Sec. 249. Duty of certain receivers to make reports.
- Sec. 250. Duty of receivers to give notice to creditors.
- Sec. 251. Delivery of property and payment of debts to receiver after notice.
- Sec. 252. Penalty for concealing property from receiver.
- Sec. 253. Duty of receiver to call creditors' meeting.
- Sec. 254. Proceedings at creditors' meeting.
- Sec. 255. Deduction of disbursements and commissions by receiver.
- Sec. 256. Refunding consideration of subsisting contracts.
- Sec. 257. Retention of funds for subsisting contracts and pending suits.
- Sec. 258. Payment of debts not due.
- Sec. 259. Allowance of set-offs.
- Sec. 260. Penalties recovered by receiver.
- Sec. 261. Order of payment by receiver.
- Sec. 262. Failure to file claim before first dividend
- Sec. 263. Second dividend by receiver.
- Sec. 264. Surplus to stockholders.
- Sec. 265. Disposition of moneys retained by receiver for suits.
- Sec. 266. Duty of receiver as to unclaimed dividend.
- Sec. 267. Effect of failure to file claim before second dividend.
- Sec. 268. Final accounting by receiver.
- Sec. 269. Notice of final accounting.
- Sec. 270. Hearing on final accounting.
- Sec. 271. Reference to final accounting.
- Sec. 272. Further accounting.
- Sec. 273. Removal of receiver.
- Sec. 274. Vacancy.
- Sec. 275. Renunciation by receiver.
- Sec. 276. Control of receiver by court.
- Sec. 277. Commissions and expenses of receiver in voluntary dissolution.



Sec. 278. Commissions and expenses of receiver except in voluntary dissolution.

ART. 12. Provisions applicable to two or more of the foregoing proceedings or actions (§§ 300-316).

Sec. 300. Application of preceding article to certain corporations.

Sec. 301. Officers and agents may be compelled to testify in certain actions.

Sec. 302. Injunctions staying actions by creditors in certain actions.

Sec. 303. Creditors of corporations may be brought in to prove their claims in certain actions.

Sec. 304. When attorney general must bring certain actions.

Sec. 305. Requisites of injunctions against corporations in certain cases.

Sec. 306. Appointment of receivers of property of corporations.

Sec. 307. Judicial suspension or removal of officer of corporation.

Sec. 308. Application of the last three sections.

Sec. 309. Misnomer not available in action against stockholder.

Sec. 310. Appraisal of property of insolvent corporation.

Sec. 311. Application of attorney general for removal of receiver and to facilitate closing affairs of receivership.

Sec. 312. Service of papers upon attorney general.

Sec. 313. Designation of depositories of funds in order appointing receiver.

Sec. 314. Application to court in certain actions and proceedings.

Sec. 315. County wherein action may be brought by attorney general on behalf of the people.

Sec. 316. Preferences in actions of (or) proceedings by or against receivers.

ART. 13. Alteration and repeal of charter of corporation (§§ 320-321).

ART. 14. Laws repealed, construction; when to take effect (§§ 330-332).

**§ 1025. Nevada Statutes—Receivers of Corporations.** General provisions for appointment of receiver of corporation. Nevada Code of Civil Practice, ch. 25, "Receivers," sec. 251, subsec. 5. Revised Laws of Nevada (1912), Vol. II, sec. 5193.

Receivers upon dissolution of corporation. Revised Laws of Nevada (1912), Vol. I, sec. 1194.

Receiver of Mutual Insurance Co. Revised Laws of Nevada (1912), Vol. I, sec. 1301 et seq.

**§ 1026. Ohio Statutes—Receivers of Corporations.** General statutes providing for the appointment of receiver of corporation. Ohio General Code, sec. 11894, subsec. 5.<sup>53</sup>

<sup>53</sup> This provision is the same as of 1853, found in the first Ohio Code of Civil Procedure, sec. 244, subsec. 5, except the present subsec. 5 contains the word "title" in place of "code." The original Ohio Code of 1853 followed in two or three years the New York Code of Civil Procedure, which was the pioneer code. The above provisions as to receivers of corporations follow the original New York Code word for word. What is meant in Ohio by "special statute where a corporation is insolvent, or is in imminent danger of insolvency," is hard to say, because, although Ohio has special statutes providing for a receiver upon dissolution it has no special statutes providing for a receiver when a corporation is insolvent or is in imminent danger of insolvency. This part of the receivership statute, sec. 244, subsec. 5, of the Ohio Civil Code, as originally passed, was evidently copied from the New York Code. But New York had special statutes providing for a receiver under the circumstances and now has such statutes; but Ohio did not have such statutes and has not today. It is natural that we should find some difficulty in interpreting that part of the Ohio General Code

which refers to "special statutes when a corporation \* \* \* is insolvent or is in imminent danger of insolvency," and such statutes do not in fact exist. The Ohio decisions on the subject of appointing a receiver on the grounds of insolvency of a corporation are conflicting, so we are relegated to the Usages and Rules of Equity on the subject. See sec. 241, Vol. I, *supra*. Other states have followed the New York statute but have changed said subsec. 5 to read, for instance, as follows: "5. When a corporation has been dissolved or is insolvent or is in imminent danger of insolvency or has forfeited its corporate rights." See Thornton's Annotated Civil Code of Indiana, pt. 2, p. 1431, sec. 1036, sec. 245, of Code of Indiana; Burns' Annotated Indiana Statutes, Revision of 1914, Vol. I, sec. 1279, p. 757-6; see Idaho Revised Code, ch. 5, sec. 4329-5; see Kansas Civil Code of Procedure, sec. 266, subsec. 5; General Statutes of Kansas (1909), sec. 5860, subsec. 5, where Kansas has evidently copied the New York or the Ohio statute, yet in Kansas we find special statutes covering the circumstances mentioned in subsec. 5.

Receiver of dissolved corporation. General Code of Ohio, sec. 11938 et seq. (See particularly G. C. § 11944.)

Trustee of corporation dissolved under quo warranto proceedings. Ohio General Code, sec. 12325 et seq.

**§ 1027. Pennsylvania Statutes—Receivers of Corporations.** Receivers after dissolution by attorney general by quo warranto. Purden's Digest, 13th Ed., Vol. III, p. 3748.

Receivers after dissolution of corporations not for profit. Purden's Digest, 13th Ed., Vol. V, p. 5341.

Trust companies to act as receivers; trust companies may act as receivers. Purden's Digest, 13th Ed., Vol. IV, p. 4830.

**§ 1028. Rhode Island Statutes—Receivers of Corporations.** Receivers after dissolution. General Laws of Rhode Island (1909), ch. 213, sec. 27 et seq., p. 715 et seq.

**§ 1029. South Carolina Statutes—Receivers of Corporations.** Power of court to restrain corporation on behalf of judgment creditor and appoint a receiver. South Carolina Civil Code of Procedure, sec. 478.

Receiver upon dissolution of corporation. Civil Code of South Carolina, sec. 2817 et seq.

**§ 1030. South Dakota Statutes—Receivers of Corporations.** General receivership statutes. Code of Civil Procedure of North Dakota, sec. 227, subsec. 5.

After dissolution of corporation by quo warranto proceedings. Code of Civil Procedure of North Dakota, sec. 485.

**§ 1031. Tennessee Statutes—Receivers of Corporations.** Receiver after dissolution of corporation. Code of Tennessee, sec. 5182 (3426) 4163; Thompson's Shannon's Code of Tennessee, 1917 Edition of Shannon's Code of 1896.

**§ 1032. Texas Statutes—Receivers of Corporations.** General statutes providing for the appointment of receiver of cor-

poration. Vernon Sayles' Texas Civil Statutes (1914), Vol. II, art. 2128, sec. 1465.

Receiver upon dissolution of corporation. Vernon Sayles' Texas Civil Statutes (1914), Vol. I, art. 1206.

Receiver of insolvent corporation at instance of attorney general instituting quo warranto proceedings. Vernon Sayles' Texas Civil Statutes (1914), Vol. I, art. 1202.

Receiver of insurance company at instance of attorney general instituting quo warranto proceedings. Vernon Sayles' Texas Civil Statutes (1914), Vol. III, art. 4851.

Receiver of life, health and accident insurance company at instance of commissioner of insurance. Vernon Sayles' Texas Civil Statutes (1914), Vol. III, art. 4758.

**§ 1033. Utah Statutes—Receivers of Corporations.** General statutes providing for receiver of corporation. Compiled Laws of Utah (1907), sec. 3114.

Appointment of receiver upon dissolution of corporation. Compiled Laws of Utah (1907), sec. 3115.

Receiver for bank failing to keep up reserve. Compiled Laws of Utah (1907), sec. 378.

Receiver for insolvent bank. Compiled Laws of Utah (1907) secs. 377, 390.

Receiver for building and loan association. Compiled Laws of Utah (1907), secs. 399, 400.

Receiver for insurance company. Compiled Laws of Utah (1907), sec. 415.

Receiver for loan and trust association. Compiled Laws of Utah (1907), sec. 430.

**§ 1034. Vermont Statutes—Receivers of Corporations.** Receiver when contempt charges filed against corporation. Public Statutes of Vermont (1906), sec. 4256.

Receiver when charter expires or is annulled. Public Statutes of Vermont (1906), sec. 4277.

Receiver upon dissolution for nonpayment of annual license tax. Public Statutes of Vermont (1906), sec. 760 et seq.

Receiver of insurance company. Public Statutes of Vermont (1906), sec. 4807 et seq.

**§ 1035. Washington Statutes—Receivers of Corporations.** Appointment of receivers generally under Washington Code of Civil Procedure. Washington Code, sec. 741, subsec. 5; Remington and Ballinger Annotated Codes and Statutes of Washington, Vol. I, sec. 741 (5456), subsec. 5.

Receiver of corporation in quo warranto proceedings. Remington and Ballinger Annotated Codes and Statutes of Washington, Vol. I, sec. 1044.

Receiver on dissolution of corporation not for profit. Remington and Ballinger Annotated Codes and Statutes of Washington, Vol. II, sec. 3761.

Receiver of insolvent life insurance company. Remington and Ballinger Annotated Code and Statutes of Washington, Vol. II, sec. 6144.

**§ 1036. West Virginia Statutes—Receivers of Corporations.** Receivers of corporations before and after dissolution. West Virginia Code, Annotated (1913), Vol. II, sec. 2890.

Receivers in quo warranto proceedings. West Virginia Code, Annotated (1913), Vol. II, sec. 4517.

Receiver in voluntary dissolution. West Virginia Code, Annotated (1913), Vol. II, sec. 2888.

Receiver of insolvent bank. West Virginia Code, Annotated (1913), Vol. II, sec. 3058.

Receiver of insurance companies. West Virginia Code, Annotated (1913), Vol. II, sec. 1369, 1367.

Receiver of investment companies. West Virginia Code, Annotated (1913), Vol. II, sec. 3274.

**§ 1037. Wisconsin Statutes—Receivers of Corporations.** General receivership statutes covering receivers of corporations. Wisconsin Civil Code, Wisconsin Statutes, sec. 2787, subsec. 4.

Receiver for insolvent company. Wisconsin Statutes, sec. 3216.

Receiver in quo warranto proceedings. Wisconsin Statutes, sec. 3246.

Receiver in actions to annul corporation. Wisconsin Statutes, sec. 3246.

Receiver of insurance companies. Wisconsin Statutes, secs. 1403, 1921.

Receiver for insolvent bank. Wisconsin Statutes, sec. 3219.

Receiver in creditors' suits against corporations. Wisconsin Statutes, sec. 3219.

Receiver for loan company. Wisconsin Statutes, sec. 2014-26.

**§ 1038. Wyoming Statutes—Receivers of Corporations.** General Receivership Statutes and Civil Code of Wyoming. Wyoming Compiled Statutes, sec. 4914, subsec. 5.

Receiver of insolvent bank. Wyoming Compiled Statutes, sec. 4042.

Receiver of dissolved corporations. Wyoming Compiled Statutes, sec. 4241.

#### STATUTES AUTHORIZING TRUST AND OTHER CORPORATIONS TO ACT AS RECEIVERS

**§ 1039. History and Comment on Statutes Authorizing Trust and Other Corporations to Act as Receivers.** It was early said by Blackstone that a corporation aggregate could not act as an executor or administrator because it could not take the necessary oath of office. This technical difficulty was evaded by the corporation naming an agent called a "syndic" to whom letters were issued.<sup>53a</sup> This same disqualification would hold good in the matter of a corporation attempting to act as a receiver. Corporations, particularly trust companies, which have deposited bonds with the state offer some advantages why they should act as receivers and many states have statutes permitting them so to act.

<sup>53a</sup> Minnesota Loan & Trust Co. v. Beebe (1881), 40 Minn. 7; see Revised Laws of Minnesota (1905), sec. 3038.

§ 1040. **District of Columbia Statutes—Trust Company to Act as Receiver.** Code of Laws for the District of Columbia, sec. 721.

§ 1041. **Florida Statutes—Trust Company to Act as Receiver.** Compiled Laws of Florida (1914), sec. 2736t.

§ 1042. **Georgia Statutes—Trust Company to Act as Receiver.** Park's Annotated Code of Georgia (1914), sec. 2817, subsec. 8.

§ 1043. **Idaho Statutes—Trust Company to Act as Receiver.** Idaho Revised Codes (1906), sec. 2961, subsec. 3 et seq.

§ 1044. **Illinois Statutes—Trust Company to Act as Receiver.** Illinois Statutes, Annotated (1906), sec. 2560.

§ 1045. **Maryland Statutes—Trust Company to Act as Receiver.** Annotated Code of Maryland (1911), Vol. I, p. 249.

§ 1046. **Minnesota Statutes—Trust Company to Act as Receiver.** Revised Laws of Minnesota (1905), sec. 3038.

§ 1047. **Missouri Statutes—Trust Company to Act as Receiver.** Missouri Annotated Statutes (1906), sec. 1427.

§ 1048. **Montana Statutes—Trust Company to Act as Receiver.** Revised Code of Montana (1907), sec. 3936.

§ 1048½. **New York Statutes—Trust Company to Act as Receiver.** Consolidated Laws of New York—Banking Law, Art. V, sec. 186, subsec. 6.

§ 1049. **Ohio Statutes—Trust Company to Act as Receiver.** Ohio General Code, sec. 9475.

§ 1050. **Pennsylvania Statutes—Trust Company to Act as Receiver.** Trust companies may act as assignees, receivers, guardians, executors, administrators, etc. Purden's Digest, 13th ed., Vol. IV, p. 4830.

§ 1051. **Rhode Island Statutes—Trust Company to Act as Receiver.** General Laws of Rhode Island (1909), "Powers of Banks," etc., ch. 231, sec. 2, subdiv. e, p. 809.

§ 1052. **South Dakota Statutes—Trust Company to Act as Receiver.** "Law of Trust Companies," ch. 74, Laws 1905, sec. 4, 2d Compiled Laws of South Dakota (1908), Vol. II, p. 129.

§ 1053. **Texas Statutes—Trust Company to Act as Receiver.** Vernon Sayles' Texas Civil Statutes (1914), Vol. I, art. 540. Company may qualify as guardian, executor, etc., or be sole guarantor or surety on bonds, upon what conditions; evidence of compliance.

§ 1054. **Vermont Statutes—Trust Company to Act as Receiver.** Public Statutes of Vermont (1906), sec. 4687.

§ 1055. **Washington Statutes—Trust Company to Act as Receiver.** Corporate powers of trust companies. Remington & Ballinger Annotated Codes and Statutes of Washington, Vol. III, sec. 3349.

§ 1056. **West Virginia Statutes—Trust Company to Act as Receiver.** Additional security in certain cases. West Virginia Code Annotated (1913), Vol. II, p. 1291, sec. 3180. Same; liability of capital of company for losses.

§ 1057. **Wisconsin Statutes—Trust Company to Act as Receiver.** Trust companies. Wisconsin Statutes (1898), sec. 17919.

§ 1058. **Wyoming Statutes—Abstract and Loan Company as Receiver.** Abstract and loan companies which in Wyoming do a so-called trust company business may act as receiver. Chapter 283, "Abstract and Loan Companies," secs. 4235 et seq., Wyoming Compiled Statutes (1910), p. 1043.



## PARTNERSHIP RECEIVERSHIP STATUTES

§ 1059. **History and Comment on Statutes Providing for Receivers of Partnership Property.** The usages and rules of equity provide for the appointment of a receiver of partnership property.<sup>54</sup> Nevertheless many codes of civil procedure, beginning with the Indiana Code of 1850, provide for the appointment of a receiver. "In actions between partners or persons jointly interested in any property or fund."<sup>55</sup> Many civil codes following Indiana have inserted in their codes provisions similar to the provision of the Indiana Code.<sup>56</sup> These statutes, when they go no farther than the Indiana Code, do little more than codify the usages and rules of equity on the subject. A few statutes go a little further and provide more specifically for a receiver of partnership property or joint estates. We do not cite all the codes but we cite some of the more detailed statutes as follows. And since the provision for the appointment of a receiver of a partnership is frequently found as one of the subdivisions of so-called general receivership statutes we refer the reader to that subdivision of this chapter covering that subject at sec. 978, *supra*.

§ 1060. **Colorado Statutes—Receivers of Partnership Property.** Court may prevent waste by surviving party. Court-right's Colorado Statutes (1914), sec. 4788.

§ 1061. **Connecticut Statutes—Receivers to Partnership Property.** Receiver of partnership, when and how appointed. General Statutes of Connecticut, ch. 72, "Receivers," secs. 1048, 1049, 1050.

§ 1062. **Indiana Statutes—Receivers of Partnership Property.** A receiver may be appointed, "In actions between partners, or persons jointly interested in any property or fund."

<sup>54</sup> See ch. VII, Vol. I, *infra*.

<sup>56</sup> Ohio General Code, sec. 11894.

<sup>55</sup> Burns' Annotated Indiana Statutes (1914), Vol. I, sec. 1279, sec. 2. subsec. —.

Burns' Annotated Indiana Statutes, Revision of 1914, Vol. I, p. 755, sec. 1279 (1236, Second). This is a provision of the Indiana Civil Code. Provisions resembling this are found in many of the state civil codes of procedure.

**§ 1063. Ohio Statutes—Receivers of Partnership Property.**  
Ohio General Code, sec. 11894 (R. S. 5587), subsec. 1.

**§ 1064. Rhode Island Statutes—Receivers of Joint Estates.**  
General Laws of Rhode Island (1909), "Receivers to Manage Joint Estates," secs. 1 et seq., ch. 332, p. 1209.

#### RAILWAY RECEIVERSHIP STATUTES

**§ 1065. History and Comment on English Statutes Permitting Receivers of Railways.** Previous to August 20, 1867, when the following act of parliament was passed, no receivers were appointed by the courts of England to run a railway.<sup>57</sup> The following act is an enabling act. We are reproducing at length those portions of the act relating to receivers because a knowledge of this act is necessary to understand the decisions in England on the subject of railways subsequent to 1867.

The English law controlling railway receiverships, although of course, not binding on the American courts, nevertheless is most instructive and interesting to the receiver of an American railway system and to the legal advisors of such receiver.

**§ 1066. English Statutes Permitting Receivers of Railways (Text).**

#### CAP. CXXVII

An Act to amend the Law relating to Railway Companies.<sup>58</sup>  
(20th August, 1867). Be it enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in

<sup>57</sup> See ch. XV, Vol. I, *supra*.

<sup>58</sup> 30 and 31 Vict., ch. 127.

this present Parliament assembled, and by the Authority of the same, as follows:

#### PRELIMINARY

SHORT TITLE. 1. This Act may be cited as The Railway Companies Act, 1867.

EXTENT OF ACT. 2. Except as in this Act expressly otherwise provided, this Act shall not extend to *Scotland*.

INTERPRETATION OF TERMS. 3. In this Act—

The Term “Company” means a Railway Company; that is to say, a Company constituted by Act of Parliament, or by Certificate under Act of Parliament, for the Purpose of constructing, maintaining, or working a Railway (either alone or in conjunction with any other Purpose):

The Term “Action” includes Suit or other Proceeding:

The Term “Judgment” includes Decree, Order, or Rule:

The Term “Share” includes Stock:

The Term “Person” includes Corporation:

The Term “Court of Chancery” or “Court” means the Court of Chancery in *England* or *Ireland*, as the Case requires:

The Term “Gazette” means, with respect to *England*, the *London Gazette*, and with respect to *Ireland* the *Dublin Gazette*.

#### PROTECTION OF ROLLING STOCK AND PLANT

RESTRICTION ON EXECUTION AGAINST PERSONAL PROPERTY OF COMPANY. 4. The Engines, Tenders, Carriages, Trucks, Machinery, Tools, Fittings, Materials, and Effects, constituting the Rolling Stock and Plant used or provided by a Company for the Purposes of the Traffic on their Railway, or of their Stations or Workshops, shall not, after their Railway or any Part thereof is open for Public Traffic, be liable to be taken in Execution at Law or in Equity at any Time after the passing of this Act, and before the First Day of *September* One thousand eight hundred and sixty-eight, where the Judgment on which Execution issues is recovered in an Action on a Contract entered into after the passing of this Act, or in an Action not on a Contract commenced after the passing of this Act; but the Person who has recovered any such Judgment may obtain the Appointment of a Receiver, and, if necessary, of a Manager, of the Undertaking of the Company, on Application by Petition in a summary Way to the Court of Chancery in *England* or in *Ireland*, according to the Situation of the Railway

of the Company; and all Money received by such Receiver or Manager shall, after due Provision for the Working Expenses of the Railway and other proper Outgoings in respect of the Undertaking, be applied and distributed under the Direction of the Court in Payment of the Debts of the Company and otherwise according to the Rights and Priorities of the Persons for the Time being interested therein; and on Payment of the Amount due to every such Judgment Creditor as aforesaid the Court may, if it think fit, discharge such Receiver or such Receiver and Manager.

#### DETERMINATION OF QUESTIONS RESPECTING EXECUTIONS.

5. If in any Case where Property of a Company has been taken in Execution a Question arises whether or not it is liable to be so taken notwithstanding this Act, the same may be heard and determined on an Application by either Party by Summons in a summary Way to the Court out of which the Execution issued, or if the Court is One of the Superior Courts of Law, then to a Judge of any One of those Courts, and such Determination shall be final and binding.

#### ARRANGEMENTS

##### PREPARATION AND FILING OF SCHEME OF ARRANGEMENT.

6. Where a Company are unable to meet their Engagements with their Creditors the Directors may prepare a Scheme of Arrangement between the Company and their Creditors (with or without Provisions for settling and defining any Rights of Shareholders of the Company as among themselves, and for raising, if necessary, additional Share and Loan Capital, or either of them), and may file the same in the Court of Chancery in *England* or in *Ireland*, according to the Situation of the principal Office of the Company, with a Declaration in Writing under the Common Seal of the Company to the effect that the Company are unable to meet their Engagements with their Creditors, and with an Affidavit of the Truth of such Declaration made by the Chairman of the Board of Directors and by the other Directors, or the major Part in Number of them, to the best of their respective Judgment and Belief.

STAY OF ACTIONS. 7. After the filing of the Scheme, the Court may, on the Application of the Company on Summons or Motion in a summary Way, restrain any Action against the Company on such Terms as the Court thinks fit.

NOTICE IN GAZETTE. 8. Notice of the filing of the Scheme shall be published in the Gazette.

STAY OF EXECUTIONS, &C. 9. After such Publication of Notice no Execution, Attachment, or other Process against the Property of the Company shall be available without Leave of the Court, to be obtained on Summons or Motion in a summary Way.

ASSENT BY MORTGAGEES, &C. 10. The Scheme shall be deemed to be assented to by the Holders of Mortgages or Bonds issued under the Authority of the Company's Special Acts when it is assented to in Writing by Three Fourths in Value of the Holders of such Mortgages or Bonds, and shall be deemed to be assented to by the Holders of Debenture Stock of the Company when it is assented to in Writing by Three Fourths in Value of the Holders of such Stock.

ASSENT BY HOLDERS OF RENTCHARGE, &C. 11. Where any Rentcharge or other Payment is charged on Receipts of or is payable by the Company in consideration of the Purchase of the Undertaking of another Company, the Scheme shall be deemed to be assented to by the Holders of such Rentcharge or other Payment when it is assented to in Writing by Three Fourths in Value of such Holders.

ASSENT BY PREFERENCE SHAREHOLDERS. 12. The Scheme shall be deemed to be assented to by the Guaranteed or Preference Shareholders of the Company when it is assented to in Writing as follows:—If there is only One Class of Guaranteed or Preference Shareholders, then by Three Fourths in Value of that Class, and if there are more Classes of Guaranteed or Preference Shareholders than One, then by Three-Fourths in Value of each such Class.

ASSENT BY ORDINARY SHAREHOLDERS. 13. The Scheme shall be deemed to be assented to by the Ordinary Shareholders of the Company when it is assented to at an Extraordinary General Meeting of the Company specially called for that Purpose.

ASSENT BY LEASING COMPANY. 14. Where the Company are Lessees of a Railway the Scheme shall be deemed to be assented to by the Leasing Company when it is assented to as follows:

In Writing by Three Fourths in Value of the Holders of Mortgages, Bonds, and Debenture Stock of the Leasing Company:

If there is only One Class of Guaranteed or Preference Shareholders of the Leasing Company, then in Writing by Three Fourths in Value of that Class, and if there are more Classes of Guaranteed or Preference Shareholders in the Leasing Company than One, then in Writing by Three Fourths in Value of each such Class:

By the Ordinary Shareholders of the Leasing Company at an Extraordinary General Meeting of that Company specially called for that Purpose.

ASSENT OF CREDITORS, &C., NOT AFFECTED, UNNECESSARY.

15. Provided that the Assent to the Scheme of any Class of Holders of Mortgages, Bonds, or Debenture Stock, or of any Class of Holders of a Rentcharge or other Payment as aforesaid, or of a Leasing Company, shall not be requisite in case the Scheme does not prejudicially affect any Right or Interest of such Class or Company.

APPLICATION FOR CONFIRMATION OF SCHEME. 16. If at any Time within Three Months after the filing of the Scheme, or within such extended Time as the Court from Time to Time thinks fit to allow, the Directors of the Company consider the Scheme to be assented to as by this Act required, they may apply to the Court by Petition in a summary Way for Confirmation of the Scheme.

Notice of any such Application, when intended, shall be published in the Gazette.

CONFIRMATION OF SCHEME. 17. After hearing the Directors, and any Creditors, Shareholders, or other Parties whom the Court thinks entitled to be heard on the Application, the Court, if satisfied that the Scheme has been within Three Months after the filing of it, or such extended Time (if any) as the Court has allowed, assented to as required by this Act, and that no sufficient Objection to the Scheme has been established, may confirm the Scheme.

ENROLLMENT AND EFFECT OF SCHEME. 18. The Scheme when confirmed shall be enrolled in the Court, and thenceforth the same shall be binding and effectual to all Intents, and the Provisions thereof shall, against and in favor of the Company and all Parties assenting thereto or bound thereby, have the like Effect as if they had been enacted by Parliament.

NOTICE OF CONFIRMATION OF SCHEME. 19. Notice of the Confirmation and Enrollment of the Scheme shall be published in the Gazette.

COMPANY TO KEEP PRINTED COPIES OF SCHEME FOR SALE. 20. The Company shall at all Times keep at their principal Office printed Copies of the Scheme, when confirmed and enrolled, and shall sell such Copies to all Persons desiring to buy the same at a reasonable Price, not exceeding Six-pence for each Copy.

PENALTY FOR NEGLECT. If the Company fail to comply with this Provision they shall be liable to a Penalty not exceeding Twenty Pounds, and to a further Penalty not exceeding Five Pounds for every Day during which such Failure continues after the First Penalty is incurred, which Penalties shall be recovered and applied as Penalties under The Railways Clauses Consolidation Act, 1845, are recoverable and applicable.

PROVISION FOR CASES WHERE RAILWAYS OR PART IN SCOTLAND. 21. Where a Company whose principal Office is situate in *England* have a Railway or Part of a Railway in *Scotland* the following provisions shall have effect:

(1) Any Scheme under this Act shall be filed in the Court of Chancery in *England*.

(2) Where, after the filing of the Scheme, any Person who is not amenable to the Jurisdiction of the Court of Chancery in *England* brings any Action against the Company in *Scotland*, the Court of Session may, on the Application of the Company by Petition in a summary Way, sist, stay or interdict the same on such Terms as the Court thinks fit:

(3) Notice of the filing of the Scheme shall be published in the *Edinburgh Gazette*, and after such publication no diligence against the Property of the Company in *Scotland* shall be available for any Person who is not amenable to the Jurisdiction of the Court of Chancery in *England* without the Leave of the Court of Session, to be obtained on Petition in a summary Way:

In this Section the Term "Court of Session" means either Division of the Court of Session, or in Time of Vacation the Lord Ordinary officiating on the Bills.

GENERAL ORDERS FOR REGULATION OF PRACTICE IN COURT OF CHANCERY. 22. The Lord Chancellor of *Great Britain*, with the Advice and Assistance of the Lords Justice of the Court of Appeal in Chancery, the Master of the Rolls, and the Vice-Chancellors, or any Two of those Judges, and the Lord Chancellor of *Ireland*, with the Advice and Assistance of the Lord Justice of Appeal in Chancery and the Master of the Rolls, or One of them, may from Time to Time make General Orders for the Regulation of the Practice of the Courts of Chancery in *England* and *Ireland* respectively under this Act.

**§ 1067. History and Comment on United States Statutes Governing Receivers of Railways.** The United States Judicial Code of 1911 contains a number of paragraphs peculiarly applicable to receivers generally appointed by federal courts. These provisions of the code, of course, are applicable to receivers of railways. In recent years a great deal of legislation has been passed by congress under its power to regulate interstate and foreign commerce. The enactments affecting common carriers have been made generally by statute to apply to receivers and operating trustees. We have inserted a number of paragraphs making such statutes so apply and have indicated full references to the longer statutes themselves.

**§ 1068. United States Statutes—Receivers of Railways Subject to Interstate Commerce Commission (Text).**

#### REGULATION OF COMMON CARRIERS OF INTERSTATE AND FOREIGN COMMERCE <sup>59</sup>

**FORM OF ACCOUNTS—APPLICABLE TO RECEIVERS.**<sup>60</sup> "The Commission may in its discretion prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers, subject to the provisions of this act, including the accounts, records and memoranda of the movement of traffic as well as the receipts and expenditures of money. The Commission shall

<sup>59</sup> Act of June 29, 1906, ch. 3591, 34 Stat. at L. 584; United States Compiled Statutes (1916), pars. 8563 et seq.

<sup>60</sup> Act of June 29, 1906, ch. 3591, par. 20 34 Stat. at L. 594; United States Compiled Statutes (1916), par. 8592 (5).



at all times have access to all accounts, records and memoranda kept by carriers, subject to this act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records and memoranda kept by such carriers. This permission shall apply to receivers of carriers and operating trustees."

#### LIABILITY OF COMMON CARRIER TO EMPLOYEES <sup>61</sup>

RECEIVERS INCLUDED IN TERM "COMMON CARRIER." <sup>62</sup> SEC. 7. "That the term 'common carrier' as used in this act shall include the receiver or receivers, or other persons or corporations charged with the duty of the management and operation of the business of a common carrier."

#### ACT TO CREATE A COMMERCE COURT <sup>63</sup>

PENALTY FOR NONCOMPLIANCE OF ORDERS—RECEIVERS. <sup>64</sup> "In case of failure or refusal on the part of any carriers, receivers or trustees to comply with the terms of any regulation adopted and promulgated or any order made by the Commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States, and may be recovered in a civil action brought by the United States."

#### ARBITRATION BETWEEN CARRIERS AND EMPLOYEES <sup>65</sup>

RIGHTS OF EMPLOYEES UNDER FEDERAL COURT RECEIVER. <sup>66</sup> That whenever receivers appointed by a federal court are in

<sup>61</sup> Act of April 22, 1908, ch. 149, 35 Stat. at L. 65; United States Compiled Statutes (1916), pars. 8657 et seq.

<sup>62</sup> Act of April 22, 1908, ch. 149, sec. 7, 35 Stat. at L. 66; United States Compiled Statutes (1916), par. 8663.

<sup>63</sup> Act of June 18, 1910, ch. 309, 36 Stat. at L. 593; United States Compiled Statutes (1916), pars. 8563 et seq.

<sup>64</sup> Act of June 18, 1910, ch. 309, sec. 9, subsec. —, 36 Stat. at L. 548; United States Compiled Statutes (1916), par. 8569 (10).

<sup>65</sup> Act of July 15, 1913, ch. 6, 38 Stat. at L. 103; United States Compiled Statutes (1916), pars. 8666 et seq.

<sup>66</sup> Act of July 15, 1913, ch. 6, par. 9, 38 Stat. at L. 107; United States Compiled Statutes (1916), par. 8674.

possession and control of the business of employers covered by this act, the employees of such employers shall have the right to be heard through their representatives in such court upon all questions affecting the terms and conditions of their employment; and no reduction of wages shall be made by such receivers without the authority of the court, therefore, after notice to such employees, said notice to be given not less than twenty days before the hearing upon the receiver's petition or application, and to be posted upon all customary bulletin boards along or upon the railway or in the customary places on the premises of other employees covered by this act.

PHYSICAL VALUATION OF PROPERTY OF COMMON CARRIER <sup>67</sup>

APPLICABILITY TO RECEIVERS.<sup>68</sup> "The provisions of this section shall apply to receivers of carriers and operating trustees. In case of failure or refusal on the part of any carrier, receiver, or trustee, to comply with all the requirements of this section and in the manner prescribed by the Commission such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeiture to be recoverable in the same manner as other forfeitures provided for in section sixteen of the act to regulate commerce."

**§ 1069. History and Comment on Railway Receivership Statutes of Various States.** Many of the states have passed statutes governing receivership of railways. These statutes may be generally divided into three classes with reference to the purposes they purport to accomplish.

First. Those statutes which purport to protect the citizens of the state in railway receiverships such as statutes restricting the receivership to citizens of the state, statutes providing for bringing suits against a railway receiver in any county through which the railway lies, and also statutes providing for priorities in payments and distributions made by railway receivers.

<sup>67</sup> Act of March 1, 1913, ch. 92, 37 Stat. at L. 701; United States Compiled Statutes (1916), par. 8591.

<sup>68</sup> Act of March 1, 1913, ch. 92, 37 Stat. at L. 707; United States Compiled Statutes (1916), par. 8591 (14).

Second. Those statutes which provide for a sale of railway property under foreclosure of mortgage or under receivership or by courts of equity generally. These statutes generally provide how such sale can be made and how title can be perfected in the purchaser. In addition such statutes generally provide for the transfer of the franchises to the purchaser so that he or the corporation purchaser may operate the railway after he has purchased it.

Third. Provision for the appointment of a receiver by a court of equity to compel the railway to perform some duty to the public or some duty to the state.

**§ 1070. Colorado—Receivers of Railways.** Procedure to collect taxes of railway if no bid on the property is made at tax sale; appointment of receiver in such case. Colorado Annotated Statutes, Vol. IV, sec. 5784, sec. 257.

**§ 1071. Connecticut—Receivers of Railways.** Operation of railroad by receiver. General Statutes of Connecticut, sec. 3739.

Duties of railroad receivers. General Statutes of Connecticut, sec. 3802.

Return to railroad commissioners by receivers of railroads. General Statutes of Connecticut, sec. 3819.

**§ 1072. Florida—Receivers of Railways.** Receiver to enforce a decree of court of equity ordering a railroad company to construct depot, etc. Florida Compiled Laws Annotated, Vol. II, sec. 2848.

Receiver to enforce a decree of court of equity ordering a railroad company to make connections, etc. Florida Compiled Laws Annotated, Vol. II, sec. 2853.

Return of taxes by receiver of railroad. Florida Compiled Laws Annotated, Vol. I, sec. 557.

**§ 1073. Georgia—Receivers of Railways.** Duties of receivers of railroads. Parks' Annotated Code of Georgia (1914), Vol. II, sec. 2797 (2333).

Certain liens not defeated by receivership of railroads. Parks' Annotated Code of Georgia (1914), Vol. II, sec. 2796 (2332).

Liability of railroad receiver to employees. Parks' Annotated Code of Georgia (1914), Vol. II, sec. 2788 (2324).

Liability suits against receivers of railroads. Parks' Annotated Code of Georgia (1914), Vol. II, sec. 2789 (2325).

Wage liens to be first paid by receiver of railroad. Parks' Annotated Code of Georgia (1914), Vol. II, sec. 2793 (2329).

**§ 1074. Illinois—Receivers of Railways.** Receiver for railway refusing to transport grain. Illinois Statutes Annotated, J. & A., Vol. 5, sec. 8922.

Railroads and warehouses generally. Illinois Statutes Annotated, J. & A., Vol. 5, secs. 8735 et seq.

**§ 1075. Indiana—Receivers of Railways.** Receiver when carrier fails to perform certain duties to public. Burns' Annotated Indiana Statutes, Revision of 1914, Vol. II, sec. 5217.

**§ 1076. Kansas—Receivers of Railways.** Receiver in foreclosure of railroad proceedings. General Statutes of Kansas (1909), sec. 7025.

**§ 1077. Kentucky—Receivers of Railways.** Equitable action by judgment creditor for appointment of receiver of railway company. Kentucky Statutes (1915), Vol. I, sec. 814.

**§ 1078. Maine—Receivers of Railways.** Receivers of railways upon neglect to run trains. Revised Statutes of Maine (1903), p. 529, secs. 19 et seq.

**§ 1079. Missouri—Receivers of Railways.** Receiver for Railway corporation failing to ship grain in bulk. Missouri Annotated Statutes (1906), sec. 1113.

**§ 1080. New Jersey—Receivers of Railways.** Sale and re-organization of railway:<sup>68a</sup>

SEC. 72. Purchase of road sold by order of court by another road; filing and recording certificate of purchase and survey evidence.

SEC. 73. Sale by receiver; sale when road outside state.

SEC. 74. Title vested by sale or lease; organization of company by purchasers; certificate; acceptance of former charter powers.

SEC. 75. Power of new company to issue bonds and settle debts of former company.

SEC. 76. Sale by foreclosure when part of property lies without state.

SEC. 77. Proceedings by purchasers to secure portion of road in this state sold under foreclosure elsewhere; petition and decree; evidence of incorporation; transfer of property; corporate powers.

**§ 1081. New York—Receivers of Railways.** Railroad Law, art. III, "Consolidation, Lease, Sale and Reorganization." Birdseye, Cumming and Gilbert's Consolidated Laws of New York Annotated, Vol. IV, p. 4776.

**§ 1082. Ohio—Receivers of Railways.** Receiver and judicial sales of railways. Ohio General Code, secs. 9064-9078.<sup>69</sup>

**§ 1083. Oklahoma—Receivers of Railways.** Corporation commission of Oklahoma provided for in Oklahoma Constitution, art IX, secs. 15 et seq.

Railroads and public service corporations provided for in Oklahoma Constitution, art. IX, secs. 2 et seq.

**§ 1084. Oregon—Receivers of Railways.** Repair of railroads by receivers. Lord's Oregon Laws, Vol. III, secs. 6965 et seq.

<sup>68a</sup> Compiled statutes of New Jersey, vol. III, p. 4251. is a resident citizen of the state of Ohio.

<sup>69</sup> Note,— by sec. 9064, no person shall act as such receiver unless he

Claims for laborers' wages have priority in what cases. Lord's Oregon Laws, Vol. III, secs. 7435, et seq.

**§ 1085. Pennsylvania—Receivers of Railways.** Transfer of franchises of corporation reorganization. Purden's Digest, 13th ed., Vol. IV, p. 3894, "Railroads," XXVII, secs. 187 et seq.

Sale of franchises of corporation by receiver. I. "Duties of Auditor General," (m), Purden's Digest, 13th ed., Supplement p. 23, under title "Auditor General."

**§ 1086. South Carolina—Receivers of Railways.** Railroads general law. Chapter XLIX, Civil Code of South Carolina (1912), Vol. I, p. 851, sec. 3099.

Liability of corporation operating road of another corporation; trustees and receivers; liabilities. Civil Code of South Carolina (1912), sec. 3099, Vol. I, p. 852.

**§ 1087. Tennessee—Receivers of Railways.** Sale of railroads. Thompson's Shannon's Code of Tennessee, 1917 Edition, secs. 1509 et seq.

**§ 1087½. Texas—Receivers of Railways.** For statutes governing receivers of railways, see generally statutes governing receivers of corporations.

Suits against receiver of railway, when brought. Vernon Sayles' Texas Civil Statutes (1914), Vol. II, art. 2147 (1484).

**§ 1088. Vermont—Receivers of Railways.** Railroads. Chapter 188, "General Provisions," secs. 4324 et seq., Public Statutes of Vermont (1906).

SEC. 4326. Provisions applicable to persons having the possession, control or management, etc.

SEC. 3432. Court of chancery may enforce certain provisions.

SEC. 4588. Receiver appointed in another state may operate in Vermont.

**§ 1089. West Virginia—Receivers of Railways.** West Virginia Code Annotated (1913), Vol. II, p. 1234.

SEC. 3026. Same; sale of railroad; powers, duties and liabilities of new corporation; interest of purchaser to be personal property; shares of stock; stockholders' meeting.

§ 1090. **Wisconsin—Receivers of Railways.** Receivers of railroad corporations to pay wages of employees, when. Wisconsin Statutes (1898), Vol. I, p. 1275, "Corporations—General Provisions," sec. 1769.

#### STATUTES PROVIDING FOR RECEIVERS IN ATTACHMENT

§ 1091. **History and Comment on Statutes Providing for Receivers in Attachment.** As the appointment of a receiver is a provisional remedy and not an independent proceeding, but a proceeding in aid of an action already commenced, so is an attachment proceeding a provisional remedy. An attachment proceeding is considered a blending of two proceedings: one strictly in rem and the other in personam.<sup>70</sup> An attachment proceeding is generally predicated upon or ancillary to a legal action, and is strictly a proceeding at law. Therefore, being a proceeding at law and belonging exclusively to a court of law such court could not appoint a receiver under the usages and rules of equity.

Since the sheriff generally 'takes charge of property attached,'<sup>71</sup> there is generally no necessity for a receiver, except when the attached property is in such a condition that the sheriff can not properly take care of it—where the property is a business requiring operation, or a plant, or railroad, or vessel, or the like. Frequently state statutes provide rather specifically for the appointment of a receiver of attached property. These statutes will generally be found in the so-called civil code states where one court administers both legal and equitable remedies.

The Vermont statute<sup>72</sup> states rather specifically when a receiver can be appointed of goods attached—only to work up a

<sup>70</sup> Shinn on Attachment, sec. 3.

<sup>71</sup> New York Civil Code, sec. 655;  
Parsons' New York Pocket Code Civil  
Procedure, Annotated (1914), sec.

655; Burns' Annotated Indiana Statutes (1914), sec. 952.

<sup>72</sup> Public Statutes of Vermont (1906), secs. 1288 et seq.

stock of goods and dispose of them to the advantage of persons interested.

**§ 1092. District of Columbia Statutes—Receivers in Attachment.** Code of Laws of the District of Columbia, sec. 458.

**§ 1093. Illinois Statutes—Receivers in Garnishment.** Illinois Statutes Annotated (1906), J. and A., sec. 5959.

**§ 1094. Kansas Statutes—Receivers in Garnishment.** Kansas Civil Code, sec. 203; General Statutes of Kansas, sec. 5796. Appointment of receiver, bond and oath.

Kansas Civil Code, sec. 204; General Statutes of Kansas, sec. 5797. Authority and duty of receiver.

Kansas Civil Code, sec. 205; General Statutes of Kansas, sec. 5798. Notice of appointment; effect.

Kansas Civil Code, sec. 206; General Statutes of Kansas, sec. 5799. Report of receiver.

Kansas Civil Code, sec. 207; General Statutes of Kansas, sec. 5800. Sheriff as receiver.

**§ 1095. Kentucky Statutes—Receivers in Garnishment.** Kentucky Code (1913), sec. 218.

**§ 1096. Massachusetts Statutes—Receivership Dissolves Attachment.** The appointment of a receiver in Massachusetts dissolves attachments made within four months of the appointment of receiver. Revised Laws of Massachusetts (1902), Vol. II, p. 1517.

**§ 1097. Missouri Statutes—Receivers in Attachment.** Code of Missouri, sec. 2323. Receiver appointed by whom; oath and bond required.

Code of Missouri, sec. 2324. Receivers, duties of.

Code of Missouri, sec. 2325. Receiver to give notice to debtor.



Code of Missouri, sec. 2326. Receiver's report.

Code of Missouri, sec. 2327. Sheriff to act as receiver.

**§ 1098. Nebraska Statutes—Receivers in Attachment.** Nebraska Civil Code, sec. 213. Receiver; appointment.

Nebraska Civil Code, sec. 214. Same; take possession of property.

Nebraska Civil Code, sec. 215. Same; notice to debtors.

Nebraska Civil Code, sec. 217. Sheriff to act as receiver.

Nebraska Civil Code, sec. 218. Preservation of property; sale.

**§ 1099. Ohio Statutes—Receivers in Attachment.** General Code, sec. 11838 (R. S. 5539). Receiver may be appointed.

General Code, sec. 11839 (R. S. 5540). Powers and duties of receiver.

General Code, sec. 11840 (R. S. 5541). Notice of his appointment.

General Code, sec. 11841 (R. S. 5542). Report of receiver.

General Code, sec. 11842 (R. S. 5543). When sheriff to act as receiver.

General Code, sec. 11843 (R. S. 5544). How attached property disposed of.

**§ 1100. Oklahoma Statutes—Receivers in Attachment.** Compiled Laws of Oklahoma, sec. 5734 et seq.

**§ 1101. Vermont Statutes—Receivers in Attachment.** Of goods attached. Public Statutes of Vermont, sec. 1288.

Notice of petition. Public Statutes of Vermont, sec. 1289.

Receiver's bond. Public Statutes of Vermont, sec. 1290.

Order for possession. Public Statutes of Vermont, sec. 1291.

Borrowing money. Public Statutes of Vermont, sec. 1292.

**§ 1102. Washington Statutes—Receivers in Attachment.** Receiver appointed for attached property. Remington and Ballinger Annotated Codes and Statutes of Washington, Vol. I, sec. 661 [5364].

§ 1103. **Wyoming Statutes—Receivers in Attachment.** Wyoming Compiled Statutes, sec. 4865 et seq.

STATUTES PROVIDING FOR RECEIVERS IN AID OF EXECUTION  
AND SUPPLEMENTARY PROCEEDINGS

§ 1104. **History and Comment on Statutes Governing Receivers in Aid of Execution and Supplementary Proceedings.** In England a creditor who has a judgment and seeks the aid of a court of equity to realize that judgment asks for a receiver by way of equitable execution. In America such a creditor under chancery practice brings a creditor's bill and frequently asks for a receiver under such creditor's bill. Yet legislatures have in many states provided by statutes how judgment creditors may seek equitable assets by so-called supplementary proceedings as the term is used in New York state and by proceedings in aid of execution as the term is used in Ohio and other states. Under such proceedings a receiver is frequently necessary to realize the property, or at times preserve it. Statutes generally provide for the appointment of a receiver in such cases. One of the main distinctions between a so-called equitable receiver pendente lite and a receiver in supplementary proceedings is that the former is to preserve the property; the latter receiver is for the purpose of realizing the property. These statutes may provide specifically when the property becomes vested in the receiver.<sup>72a</sup>

§ 1105. **Kansas Statutes—Receivers in Proceedings in Aid of Execution and Supplementary Proceedings.** General Statutes of Kansas (1909), sec. 6128 et seq.

§ 1106. **Nebraska Statutes—Receivers in Proceedings in Aid of Execution and Supplementary Proceedings.** Code of Civil Procedure, ch. II, sec. 542. Compiled Statutes of Nebraska (1911), sec. 7115.

<sup>72a</sup> New York Statutes, "Receiver in Supplementary Proceedings," Parsons' New York Pocket Code Civil Procedure, sec. 2468.

**§ 1107. Ohio Statutes—Receivers in Proceedings in Aid of Execution and Supplementary Proceedings.** Section 11782, Ohio General Code (R. S. 5484), provides for the appointment of the sheriff or other suitable person as a receiver of the property of the judgment debtor.

**§ 1108. New York Statutes—Receivers in Supplementary Proceedings in Aid of Execution.** New York has very extensive statutes governing the right of a judgment creditor to have supplementary proceedings and in addition to have a receiver appointed in such proceedings. Found in Parsons' New York Pocket Code Civil Procedure, Annotated (1914), sec. 2432 et seq. Receiver in such proceedings, sec. 2441 et seq. The appointment of a receiver in such supplementary proceedings is specifically provided for in sec. 2464 et seq., Parsons' New York Pocket Code Civil Procedure, Annotated (1914). These statutes contain many provisions which do not pertain to ordinary equitable or to other statutory receivers.

**§ 1109. Tennessee Statutes—Receivers in Supplementary Proceedings in Aid of Execution.** Receiver appointed in proceedings in aid of execution against a corporation. Code of Tennessee, ch. 13, art. I, sec. 4730; ch. 13, art. IV, sec. 4765.

#### STATUTES PROVIDING FOR BOND IN LIEU OF RECEIVERSHIP

**§ 1110. History and Comment on Statutes Providing for Bond in Lieu of Receivership.** The appointment of a receiver is a drastic measure, the taking of one's property out of his possession before he has had his day in court. Therefore an injunction will often be allowed in lieu of a receivership when such a proceeding will properly protect the complainant. Likewise, a bond given by the party in possession may in certain cases protect the complainant. An equity court at its discretion may refuse to appoint a receiver if an injunction will give ample protection or if the party in possession proffers a bond. Nevertheless, Illinois has passed a statute emphasizing this usage and rule of equity on the subject.

§ 1111. **Illinois Statutes—Bond in Lieu of Receivership.** Illinois Statutes, Annotated, J. & A., sec. 2744.

#### STATUTES PROVIDING FOR BOND BY COMPLAINANT

§ 1112. **History and Comment on Statutes Providing for Bond by Complainant.** The usages and rules of equity do not provide for the complainant asking for a receiver giving bond to protect the party in possession or others and pay damages by reason of the order being subsequently vacated or the receiver removed or discharged. Yet some of the states have passed statutes making such a bond mandatory<sup>73</sup> or discretionary.<sup>74</sup>

§ 1113. **Alabama Statutes—Bond by Complainant.** Code of Alabama (1907), sec. 5728.

§ 1114. **Illinois Statutes—Bond by Complainant.** Illinois Statutes, Annotated, J. & A., sec. 2743.

§ 1115. **Nebraska Statutes—Bond by Complainant.** Code of Civil Procedure of Nebraska, ch. V, "Receivers." Compiled Statutes of Nebraska (1911), sec. 6819.

#### STATUTES REQUIRING RECEIVER TO GIVE BOND

§ 1116. **History and Comment on Statutes Requiring Receiver to give Bond.** The usages and rules of equity provide for the protection of the receivership estate by the court ordering the receiver to enter into a good and sufficient bond—generally payable to the state—that he will faithfully perform his duties as receiver, duly obey the orders of the court appointing him and duly and fully pay over as ordered by the appointing court the moneys or other property entrusted to his care.

<sup>73</sup> David v. Levy, 119 Ala. 242, 24 So. 589; Capital City Water Co. v. Weatherly, 108 Ala. 412, 18 So. 841;

Dreyspring v. Loeb, 113 Ala. 263, 21 So. 73.

<sup>74</sup> Anderson v. Hultberg, 117 Ill. App. 231.

Many states have codified this usage and rule of equity and thereby emphasized this important step in a receivership. Even where the statute is silent a bond from the receiver should be required.

§ 1117. **Arizona Statutes—Receiver's Bond.** Revised Statutes of Arizona (1913), secs. 675 and 677. Bond payable to state of Arizona. Revised Statutes of Arizona (1913), sec. 217.

§ 1118. **Arkansas Statutes—Receiver's Bond.** Digest of the Statutes of Arkansas (1904), ch. 125, "Receivers," (s), sec. 6342.

§ 1119. **California Statutes—Receiver's Bond.** California Code of Civil Procedure, sec. 567, tit. VII, ch. V.

§ 1120. **Colorado Statutes—Receiver's Bond.** Oath and bond of receiver; suit on bond. Colorado Code, "Receivers," ch. IX, sec. 182. Courtright's Colorado Statutes (1913), sec. 4682.

§ 1121. **Connecticut Statutes—Receiver's Bond.** Receiver to give bond. General Statutes of Connecticut, ch. 72, "Receivers," sec. 1045.

§ 1122. **Georgia Statutes—Receiver's Bond.** Receiver may be required to give bond. Park's Annotated Code of Georgia (1914), "Receivers," sec. 5482.

§ 1123. **Illinois Statutes—Receiver's Bond.** Charges of surety company for executing receiver's bond part of expenses of receiver. Illinois Statutes Annotated (1906), J. & A., sec. 2539.

• § 1124. **Idaho Statutes—Receiver's Bond.** Idaho Revised Codes (1906), sec. 4331.

§ 1125. **Iowa Statutes—Receiver's Bond.** Code of Iowa, sec. 3823.

§ 1126. **Kansas Statutes—Receiver's Bond.** General Statutes of Kansas (1909), sec. 5862. Cost of bond, same statutes, sec. 613.

§ 1127. **Kentucky Statutes—Receiver's Bond.** Kentucky Code (1909), sec. 301.

§ 1128. **Minnesota Statutes—Receiver's Bond.** Cost of premium on receiver's bond lawful expense for receiver. Revised Laws of Minnesota (1905), sec. 4528.

§ 1129. **Missouri Statutes—Receiver's Bond.** Missouri Annotated Statutes (1906), sec. 754.

§ 1130. **Montana Statutes—Receiver's Bond.** Receivers' bonds payable to state. Revised Code of Montana (1907), secs. 412, 413.

§ 1131. **Ohio Statutes—Receiver's Bond.** General Code of Ohio, sec. 11896.

§ 1132. **Oklahoma Statutes—Receiver's Bond.** Compiled Laws of Oklahoma (1909), sec. 5774.

§ 1133. **Oregon Statutes—Receiver's Bond.** Lord's Oregon Laws, Vol. I, sec. 1109.

Cost of bond taxed as costs when paid by receiver to a person or to a company. Lord's Oregon Laws, Vol. II, sec. 4678.

§ 1134. **South Dakota Statutes—Receiver's Bond.** Compiled Laws of South Dakota (1908), sec. 230.

§ 1135. **Tennessee Statutes—Receiver's Bond.** Code of Tennessee, secs. 5752, 6269.

**STATUTES PROVIDING FOR NOTICE OF APPLICATION**

§ 1136. **History and Comment on Statutes Providing for Notice of Application for Receiver.** Both the principles of Anglo-Saxon common law, the usages and rules of equity and the provisions of the constitution of the United States, provide that property shall not be taken without due process of law. Although the appointment of a receiver is not a final taking of one's property it frequently is the financial ruin of individuals and corporations. Such a proceeding therefore should not be entertained by a court of equity without notice except where the giving of the notice would frustrate the legitimate objects of the receivership.<sup>75</sup> Some states have codified this well known usage and rule of equity as follows:

§ 1137. **Alabama Statutes—Notice of Application for Receiver.** Alabama Civil Code (1907), sec. 5726.

§ 1138. **Arizona Statutes—Notice of Application for Receiver.** Revised Statutes of Arizona (1913), sec. 674.

§ 1139. **Idaho Statutes—Notice of Application for Receiver.** Idaho Revised Code (1906), sec. 4333.

§ 1140. **Indiana Statutes—Notice of Application for Receiver.** Burns' Annotated Indiana Statutes (1914), sec. 1288.

§ 1141. **Nebraska Statutes—Notice of Application for Receiver.** Code of Civil Procedure, ch. V, "Receivers;" Compiled Statutes of Nebraska (1911), sec. 6817.

§ 1142. **Tennessee Statutes—Notice of Application for Receiver.** Code of Tennessee, sec. 6268.

<sup>75</sup> See sec. 651, Vol. I, et seq., *supra*.

## STATUTES PROVIDING FOR OATH BY RECEIVER

**§ 1143. History and Comment on Statutes Providing for Oath of Office by Receiver.** It is a usage and rule of equity that officers of courts of equity shall take an oath upon entering upon their duties that they will faithfully and truly perform the duties of the office, obey the orders of the court and turn over the moneys and other property entrusted to their care as ordered so to do by the court appointing them. Some states by code or by statute have provided for the taking of an oath by the receivers. Under United States court practice the oath is evidenced by a writing signed, properly sworn to and properly filed with the papers of the case. In many of the state courts the taking of the oath is evidenced in the entry appointing the receiver.

**§ 1144. Arizona Statutes—Oath of Receiver.** Revised Statutes of Arizona (1913), sec. 677.

**§ 1145. Arkansas Statutes—Oath of Receiver.** Digest of the Statutes of Arkansas (1904), ch. 125, "Receivers" (s), sec. 6342.

**§ 1146. California Statutes—Oath of Receiver.** California Code of Civil Procedure, ch. V, "Receivers," sec. 567.

**§ 1147. Colorado Statutes—Oath of Receiver.** Colorado Code, ch. IX, "Receivers," sec. 182.

**§ 1148. Idaho Statutes—Oath of Receiver.** Idaho Revised Codes (1906), sec. 4331.

**§ 1149. Indiana Statutes—Oath of Receiver.** Burns' Annotated Indiana Statutes (1914), sec. 1281.

**§ 1150. Iowa Statutes—Oath of Receiver.** Code of Iowa, sec. 3823.



§ 1151. **Kansas Statutes—Oath of Receiver.** General Statutes of Kansas (1909), sec. 5862.

§ 1152. **Ohio Statutes—Oath of Receiver.** Ohio General Code, sec. 11896 (R. S. 5589).

§ 1153. **Oklahoma Statutes—Oath of Receiver.** Compiled Laws of Oklahoma (1909), sec. 5774.

§ 1154. **Oregon Statutes—Oath of Receiver.** Lord's Oregon Laws, Vol. I, sec. 1109.

§ 1155. **South Dakota Statutes—Oath of Receiver.** Compiled Laws of South Dakota (1908); Code of Civil Procedure, sec. 230.

#### STATUTES PROVIDING FOR SUITS BY AND AGAINST RECEIVERS

§ 1156. **History and Comment on Statutes Providing for Suits by and against Receivers.** The usages and rules of equity do not permit a receiver to be sued in his official capacity without permission from the court appointing such receiver. Any such suit without such permission is contempt of court.<sup>76</sup> On the other hand an ordinary order appointing a receiver does not generally carry with it power to a receiver to bring suits respecting the assets in his hands or to sue for assets not in his hands. Before so suing the receiver should have undoubted authority either in the original order of appointment or in a subsequent court order.

The United States Judicial Code<sup>77</sup> provides specifically for suits being brought against receivers appointed by any court of the United States "in respect to any act or transaction of his in carrying on the business connected with such property." Many state codes or state statutes have similar provisions.

<sup>76</sup> See sec. 713, Vol. I, *supra*.

<sup>77</sup> Judicial Code of United States (1911), sec. 66; see ch. XXXII, *supra*.

The United States Judicial Code contains no provision permitting receivers to sue without special leave of court, yet some state codes or state statutes have such a provision. Many of the state statutes have a provision substantially as follows: "Under the control of the court, the receiver may bring and defend actions in his own name as receiver."<sup>78</sup>

The insertion of the provision "under the control of the court" takes away from the receiver any power to independently bring a suit and so leaves in force the ordinary usages and rules of equity in this connection. The insertion of the words "in his own name as receiver" suggests difficulties. If the receiver does not get title by statute or otherwise to property which comes into his hands as receiver it is difficult to see how he can in his name as receiver defend actions against the individual or corporation whose property the receiver holds even with such a statute just referred to. If the receiver holds property as receiver and is sued thereon concerning some transaction or action of the receiver concerning this property the suit should be in the name of the receiver, with or without statute.

Generally speaking, therefore, these statutes authorizing receivers to defend suits under the control of the court do not change the usages and rules of equity on the subject.

**§ 1157. Alabama Statutes—Suits by and against Receivers.** Service of process on receivers. Alabama Civil Code (1907), sec. 5731.

**§ 1158. Arizona Statutes—Suits by and against Receivers.** Revised Statutes of Arizona (1913), sec. 679.

**§ 1159. Arkansas Statutes—Suits by and against Receivers.** Digest of the Statutes of Arkansas (1904), ch. 125, "Receivers" (s), sec. 6357.

<sup>78</sup> Ohio General Code, sec. 11897 (R. S. 5590); California Code of Civil Procedure, sec. 568.

§ 1160. **California Statutes—Suits by and against Receivers.** California Code of Civil Procedure, ch. V, “Receivers” (s), sec. 568.

§ 1161. **District of Columbia Statutes—Suits by and against Receivers.** Receiver suing to vacate fraudulent deed. Code of Laws for District of Columbia, sec. 1122.

§ 1162. **Indiana Statutes—Suits by and against Receivers.** Burns’ Annotated Indiana Statutes (1914), secs. 1285 and 1286.

§ 1163. **Iowa Statutes—Suits by and against Receivers.** Code of Iowa, sec. 3824.

§ 1164. **Kansas Statutes—Suits by and against Receivers.** General Statutes of Kansas (1909), sec. 5863.

§ 1165. **Kentucky Statutes—Suits by and against Receivers.** Kentucky Codes (1913), sec. 21, also sec. 302.

§ 1166. **Illinois Statutes—Suits by and against Receivers.** Service on receiver of corporation. Illinois Statutes, Annotated (1906), J. & A., sec. 8548.

§ 1167. **Minnesota Statutes—Suits by and against Receivers.** Revised Laws of Minnesota (1905), sec. 4066.

§ 1168. **Ohio Statutes—Suits by and against Receivers.** General Code of Ohio, sec. 11897 (R. S. 5590). Ohio Civil Code of 1853, sec. 256. 51 Ohio Laws, 57.

§ 1169. **Oklahoma Statutes—Suits by and against Receivers.** Compiled Laws of Oklahoma (1909), sec. 5775.

§ 1170. **Rhode Island Statutes—Suits against Receiver to Survive.** Action against receiver to survive. General Laws of Rhode Island (1909), Vol. I, p. 997.

§ 1171. **South Dakota Statutes—Suits by and against Receivers.** Compiled Laws of South Dakota (1908). Code of Civil Procedure, sec. 231.

STATUTES PROVIDING WHO NOT ELIGIBLE TO APPOINTMENT

§ 1172. **History and Comment on Statutes Providing Who Not Eligible to Appointment.** The usages and rules of equity provide for the appointment of a disinterested person as receiver, one whose personal interests may not clash with his interests as receiver. Nevertheless some states have passed statutes codifying these usages and rules of equity. Some statutes have gone farther and provided specifically that only a resident of the state can be appointed receiver. Some states have confined by statute the resident of the state provision to railway or other corporations receiverships.<sup>79</sup>

§ 1173. **Arizona Statutes—Who Not Eligible to Appointment.** Revised Statutes of Arizona (1913), sec. 676.

§ 1174. **Arkansas Statutes—Who Not Eligible to Appointment.** Digest of the Statutes of Arkansas (1904), ch. 125, "Receivers" (s), sec. 6355.

§ 1175. **California Statutes—Who Not Eligible to Appointment.** Who shall be appointed. California Code of Civil Procedure, ch. V, "Receivers" (s), sec. 566.

§ 1176. **Idaho Statutes—Who Not Eligible to Appointment.** Idaho Revised Codes (1906), sec. 4331.

§ 1177. **Indiana Statutes—Who Not Eligible to Appointment.** Burns' Annotated Indiana Statutes (1914), sec. 1280.

§ 1178. **Kansas Statutes—Who Not Eligible to Appointment.** General Statutes of Kansas (1909), sec. 5861.

<sup>79</sup> Ohio General Code, sec. 11895.

§ 1179. **Oklahoma Statutes—Who Not Eligible to Appointment.** Compiled Laws of Oklahoma (1909), sec. 5773.

§ 1180. **Kentucky Statutes—Who Not Eligible to Appointment.** Kentucky Codes (1913), sec. 300.

§ 1181. **South Dakota Statutes—Who Not Eligible to Appointment.** Compiled Laws of South Dakota (1908); Code of Civil Procedure, sec. 229.

§ 1182. **Texas Statutes—Who Not Eligible to Appointment.** Vernon Sayles' Texas Civil Statutes (1914), Vol. II, sec. 2129.

#### STATUTES PROVIDING FOR APPEAL IN RECEIVERSHIP

§ 1183. **History and Comment on Statutes Providing for Appeal in Receivership.** The order appointing a receiver being generally interlocutory is therefore not a final order and by the usages and rules of equity is not appealable. The United States Judicial Code, however, has made an order appointing a receiver appealable.<sup>80</sup> Many states likewise have passed statutes making such orders appealable, sometimes generally, as does the United States Judicial Code, and sometimes only when such an appointment or refusal to appoint or discharge a receiver affects a substantial right.

§ 1184. **Indiana Statutes—Appeal from Appointment of Receiver.** Burns' Annotated Indiana Statutes (1914), sec. 1289.

§ 1185. **Illinois Statutes—Appeal from Appointment of Receiver.** Illinois Statutes, Annotated (1906), J. & A., sec. 8661.

§ 1186. **Missouri Statutes—Appeal from Appointment of Receiver.** Missouri Annotated Statutes (1906), sec. 806.

<sup>80</sup> United States Judicial Code (1911), sec. 68; see ch. XXXII, *supra*.

**§ 1187. Oklahoma Statutes—Appeal from Appointment of Receiver.** Compiled Laws of Oklahoma (1909), sec. 5779.

**§ 1188. Rhode Island Statutes—Appeals from Appointment of Receiver.** General Laws of Rhode Island (1909), "Practice in Equity Cases," ch. 228, sec. 34, 1020.

Rights and obligations of receiver not affected by appeal. General Laws of Rhode Island (1909), "Practice in Equity Cases," ch. 289, sec. 25, p. 1018.

#### STATUTES PROVIDING FOR PRIORITIES IN RECEIVERSHIP

**§ 1189. History and Comment on Statutes Providing for Priorities in Payments and Distributions by Receivers.** The usages and rules of equity laid down by a long list of decisions on the subject cover the questions arising concerning payments and distribution by receivers. Nevertheless, a number of the states provide by statute for the "application of funds in hand of receiver and claims preferred."<sup>81</sup> Other states confine their priority statutes to wages earned before the receivership. Oregon provides for priority of wages earned<sup>82</sup> both before and during the receivership. Each statute must be examined carefully to ascertain whether it provides for a lien or simply a preference or priority.

**§ 1190. Iowa Statutes—Preferred Claims in Receivership.** Code of Iowa Supplement (1907), secs. 3825, 3825a.

**§ 1191. Kansas Statutes—Preferred Claims in Receivership.** General Statutes of Kansas (1909), sec. 4660.

**§ 1192. Maryland Statutes—Preferred Claims in Receivership.** Annotated Code of Maryland (1911), Vol. I, p. 149.

<sup>81</sup> Vernon Sayles' Texas Civil Statutes (1914), Vol. II, art. 2135 [1472]; Supplement Code of Iowa, Annotated (1907), secs. 2825 and 2825a.  
<sup>82</sup> See p. —.

**§ 1193. Missouri Statutes—Priorities of Wage Claims in Receivership.** Missouri Annotated Statutes (1906), sec. 3167.

**§ 1194. Oregon Statutes—Priorities of Wage Claims in Receivership.** Wages earned before receivership. Lord's Oregon Laws, Vol. I, sec. 1110. Lord's Oregon Laws, Vol. III, sec. 7435 et seq.

Wages earned before receivership. Lord's Oregon Laws, Vol. I, sec. 1110.

Wages earned after receivership.

**§ 1195. Texas Statutes—Priorities in Receivership.** Application of funds in hand of receiver and claims preferred. Vernon Sayles' Texas Annotated Statutes (1914), art. 2135 [1472].

Judgments and unsued claims have preference lien over mortgage. Vernon Sayles' Texas Annotated Statutes (1914), art. 2142 [1479] et seq.

Corporation receivership; judgments and other claims have preference over mortgage. Vernon Sayles' Texas Statutes, Annotated (1914), art. 2152 [1490].

#### STATUTES PROVIDING FOR PAYMENT OF TAXES BY RECEIVER

**§ 1196. History and Comment on Statutes Providing for Payment of Taxes by Receivers.** Taxes on real estate are generally made a lien by the law of the sovereignty. Since the appointment of a receiver does not directly upset liens the receiver takes the property subject to the lien. Taxes on personalty may or may not be a lien. The payment of taxes by a receiver is generally worked out by the usages and rules of equity. However, statutes frequently provide for the listing of property by receivers. Some states have statutes providing for preferences or priorities in payment and distribution by receivers and taxes are generally mentioned among the first on the list of priorities.<sup>83</sup>

<sup>83</sup> Sec. 1195, state priority statute.

§ 1197. **Illinois Statutes—Listing Property by Receivers.**  
Illinois Statutes, Annotated (1906), J. & A., sec. 9219, subdiv. 7.

§ 1198. **Indiana Statutes—Listing Property by Receivers.**  
Burns' Annotated Indiana Statutes (1914), sec. 10340.

§ 1199. **Kansas Statutes—Listing Property by Receivers.**  
General Statutes of Kansas (1909), sec. 9220.

§ 1200. **Minnesota Statutes—Listing Property by Receivers.**  
Revised Laws of Minnesota (1905), sec. 832.

§ 1201. **South Carolina Statutes—Tax Return by Receivers.**  
Code of Laws of South Carolina (1912), secs. 296, 310, 358.

#### STATUTES GOVERNING SALES BY COURTS OF EQUITY AND RECEIVERS

§ 1202. **History and Comment on English Statutes Concerning Puffing and Blowing.** Before the passage of the act referred to below, a practice prevailed in the old chancery court as follows: After a person had been at an auction, and apparently was bound by his offer having been accepted by the auctioneer, he was liable to have his offer rejected by someone coming and offering a higher price. A most unfair proceeding because then the man who came with a new offer knew the exact measure of the bid of the man who had been bidding at the auction. Of course, in order to do even justice on these terms it was permissible to the man who had successfully bid before to bid again. Such a practice aimed at by the act, 30 and 31 Vict., c. 48, was wrong in principle.<sup>84</sup>

The act of 30 and 31 Vict., c. 48, s. 7, applied equally to a sale by private contract entered into under the sanction of the court and such a contract could not be discharged when no unfairness existed.<sup>85</sup>

<sup>84</sup> In re Oriental Bank Corporation (1887), 56 L. T. 872.

<sup>85</sup> Newman v. Hook (1880), 16 Ch. D. 561; In re Oriental Bank Corporation (1887), 56 L. T. 872



**§ 1203. English Statutes Concerning Puffing and Blowing.**

“An act for amending the law of auctions of Estates:”<sup>86</sup>

4. And whereas there is at present a conflict between Her Majesty's Courts of Law and Equity in respect of the validity of sales by auction of land where a puffer has bid, although no right of bidding on behalf of the owner was reserved, the Courts of Law holding that such sales are absolutely illegal, and the Courts of Equity under some circumstances giving effect to them, but even in Courts of Equity the rule is unsettled; And whereas it is expedient that an end should be put to such conflicting and unsettled opinions: Be it therefore enacted that from and after the passing of this Act whenever a sale by auction of land would be invalid at law by reason of the employment of a puffer, the same shall be deemed invalid in equity as well as at law.

5. And whereas as sales of land by auction are now conducted many of such sales are illegal, and could not be enforced against an unwilling purchaser, and it is expedient for the safety of both seller and purchaser that such sales should be so conducted as to be binding on both parties; Be it therefore enacted by the authority aforesaid as follows: That the particulars or conditions of sale by auction of any land shall state whether such land will be sold without reserve or subject to a reserved price, or whether a right to bid is reserved; if it is stated that such land will be sold without reserve, or to that effect, then it shall not be lawful for the seller to employ any person to bid at such sale, or for the auctioneer to take knowingly any bidding from any such person.

6. And where any sale by auction of land is declared either in the particulars or conditions of such sales to be subject to a right for the seller to bid, it shall be lawful for the seller or any one person on his behalf to bid at such auction in such manner as he may think proper.

7. And whereas it is the long settled practice of Courts of Equity in sales by auction of land under their authority to open biddings even more than once and much inconvenience has arisen from such practice, and it is expedient that the Courts of Equity should no longer have the power to open biddings after sales by auction of land under their authority:

<sup>86</sup> Chapter 48, 30 and 31 Vict. (1867).

Be it further enacted by the authority aforesaid, that the practice of opening biddings on any sale by auction of land under and by virtue of any order of the High Court of Chancery shall, from and after the time appointed for the commencement of this Act, be discontinued and the highest bidder at such sale, provided he shall have bid a sum equal to or higher than the reserved price (if any) shall be declared and allowed the purchaser, unless the court or Judge shall on the ground of fraud or improper conduct in the management of the sale, upon the application of any person interested in the land (such application to be made to the Court or Judge before the Chief Clerk's certificate of the result of the sale shall have become binding) either open the biddings, holding such bidder bound by his biddings, or discharge him from being the purchaser, and order the land to be resold upon such terms as to costs or otherwise as the court or Judge shall think fit.

**§ 1204. History and Comment on United States Statutes Affecting Sales by Courts.** The United States congress has passed an act affecting sales by courts of equity. This act is rather extensive and controls, generally, sales by United States courts. The act of March 3, 1893, prescribing the manner of sales is mandatory and divests the United States courts of the discretion which theretofore existed in making sales otherwise.<sup>87</sup> However, the act of March 3, 1893, does not bind courts of bankruptcy in making sales under powers granted in the Bankruptcy Act of July 1, 1898, and subsequent amendments thereto.<sup>88</sup>

"The effect of the adjudication in bankruptcy is to transfer the title of the property of the bankrupt and vest the same in the trustee who has the right, under the control and authority of the court to administer the same;"<sup>89</sup> and "In view of the fact that the Bankruptcy Act was enacted long after the passage of the statute of 1893 and of the complete right of administration which the Bankruptcy Act confers over the property,

<sup>87</sup> *Cumberland Lumber Co. v. Tunis* (1909), 171 Fed. 352; *Godchaux v. Morris* (1903), 121 Fed. 482.

229 U. S. 254, at 263, 57 L. ed. 1174, 33 S. Ct. R. 854.

<sup>89</sup> *Robertson v. Howard* (1912), 229 U. S. 254, at 260, 57 L. ed. 1174, 33 S. Ct. R. 854.

<sup>88</sup> *Robertson v. Howard* (1912),

real and personal, of the bankrupt estate, we think it follows that the authority to realize, by way of sale on the property of the bankrupt estate, can not be held to be limited by the provisions of the act of 1893.”<sup>90</sup>

Although the act of March 3, 1893, is mandatory, “the law does not permit a party to stand by in silence while judicial proceedings are in progress affecting his rights, and withhold objections to erroneous procedure until other rights have intervened, and then challenge their validity on account of erroneous procedure.”<sup>91</sup> Notice “For at least four weeks,” means four weeks of seven days each.<sup>92</sup> “The provision of the statute of the United States requiring that in all cases four weeks’ notice should be given of the time of sales was intended for the benefit and protection of the judgment debtor, and created a privilege and right which the judgment debtor in any case may insist upon or waive.”<sup>93</sup>

#### § 1205. United States Statutes Affecting Sales by United States Courts.

SEC. 1640. (Act March 3, 1893, ch. 225, sec. 1.) SALE OF REAL PROPERTY UNDER ORDER OR DECREE. All real estate or any interest in land sold under order or decree of any United States courts shall be sold at public auction sale at the court house of the county, parish, or city in which the property, or the greater part thereof, is located, or upon the premises, as the court rendering such order or decree of sale may direct. 27 Stat. 751, United States Compiled Statutes (1901), p. 710.<sup>94</sup>

SEC. 1641. (Act March 3, 1893, ch. 225, sec. 2.) SALE OF PERSONAL PROPERTY UNDER ORDER OR DECREE. All personal property sold under any order or decree of any court of the United States shall be sold as provided in the above section of this Act, unless in the opinion of the court rendering such

<sup>90</sup> Robertson v. Howard (1912), 229 U. S. 254, at 263, 57 L. ed. 1174, 33 S. Ct. R. 854.

<sup>91</sup> National Nickel Co. v. Nevada Nickel Syndicate, 112 Fed. 44; see also Black v. Black, 77 Fed. 785.

<sup>92</sup> Wilson v. Northwestern Mutual L. Ins. Co., 65 Fed. 38.

<sup>93</sup> Nevada Nickel Syndicate v. National Nickel Co., 103 Fed. 391.

<sup>94</sup> See Godechaux v. Morris (1903), 121 Fed. 482.

order or decree, it would be best to sell it in some other manner. 27 Stat. 751.

SEC. 1642. (Act March 3, 1893, ch. 225, sec. 3.) NOTICE OF SALE OF REAL PROPERTY UNDER ORDER, JUDGMENT OR DECREE. Hereafter no sale of real estate under any order, judgment or decree, of any United States court shall be had without previous publication of notices, of such proposed sale being ordered and had once a week for at least four weeks prior to such sale in at least one newspaper printed, regularly issued and having a general circulation in the county and state where the real estate proposed to be sold, is situated, if such there be. If said property shall be situated in more than one county or state, such notice shall be published in such of the counties where said property is situated as the court may direct. Such notice shall among other things describe the real estate to be sold. The court may, in its discretion direct the publication of the notice of sale herein provided for to be made in such papers as may seem proper. 27 Stat. 751.

**§ 1206. History and Comment on State Statutes Affecting Receiver's Sales.** Courts of equity when they have property in their possession for preservation have inherent power to sell such property when such a sale is necessary in furtherance of such preservation of such property. Courts of equity frequently take possession of property to realize the property, that is to satisfy with the property certain claims of litigants. In the latter case the sale of the property and the distribution of the proceeds is most always imperative. A court of equity since it acts in personam acts mediately and not immediately on property.<sup>95</sup> Courts of equity, therefore, give title by a process of injunction against interference with property rights or they direct a person subject to the jurisdiction to make a conveyance.

Every state has the power of regulating the tenor of real estate within its limits and the modes of its acquisition and transfer.<sup>96</sup>

Most states have passed place of trial statutes, sometimes called venue statutes, providing when certain actions shall be

<sup>95</sup> See matter discussed in Vol. I, ch. III, *infra*, "Jurisdiction."

<sup>96</sup> *United States v. Fox* (1876), 94 U. S. 315, at 323, 24 L. ed. 192.

brought. Also in what counties and places, sales of real estate and personalty under court order, shall take place. Also declaring lis pendens and regulating the same. Also declaring the effect of recording deeds, decrees and other instruments.

Statute statutes further provide that certain liens are divested at receivers' sales,<sup>97</sup> that bulk sales acts shall not be applicable to receivers. A host of other statutes are found affecting sales by courts of equity and by receivers. We have not reproduced them here, only cited a few.<sup>98</sup>

**§ 1207. Georgia Statutes—Liens Divested at Receiver's Sale.** Park's Annotated Code of Georgia (1914), sec. 5486.

**§ 1208. Pennsylvania Statutes—Sale of Property of Corporation.** Purden's Digest, 13th ed., August 1, 1912, I. "Duties of Auditor General," p. 23 et seq. Purden's Digest, 13th ed., Vol. 5, p. 5341 et seq.; Vol. 5, p. 6065.

**§ 1209. Vermont Statutes—Receiver Exempt from Bulk Sales Act.** Receiver exempt from provisions of sale of goods in bulk. Public Statutes of Vermont (1906), sec. 5011.

**§ 1210. Washington Statutes—Receiver Exempt from Bulk Sales Act.** Bulk sales law—inapplicable to receivers. Remington and Ballinger Annotated Codes and Statutes of Washington, Vol. II, sec. 5300.

#### SUNDRY STATUTES AFFECTING RECEIVERSHIPS

**§ 1211. Statutes—Extending Appointing Power to Certain Courts.** Courts having general equity jurisdiction may appoint receivers without special statutory power. Nevertheless, the so-called general receivership statutes found in most of the state civil codes,<sup>99</sup> provide generally what courts may appoint receivers.

<sup>97</sup> Park's Annotated Code of Georgia (1914), sec. 5486.      utes of Washington, Vol. II, sec. 5300.

<sup>98</sup> Public Statutes of Vermont (1906), sec. 5011; Remington and Ballingers' Annotated Code and Stat-      <sup>99</sup> See general receivership statutes, this chapter.

In addition to these general receivership statutes we have special statutes authorizing, for instance, insolvency courts with limited jurisdiction to appoint receivers,<sup>1</sup> municipal courts with very limited jurisdiction,<sup>2</sup> may be given the power to appoint receivers in certain cases.

**§ 1212. Statutes—Vesting Receiver with Title to Property.** Most state statutes authorizing the appointment of a receiver of a dissolved corporation<sup>3</sup> provide specifically that such a receiver shall get title to the property of the corporation. Some statutes go farther and provide that an ordinary equitable receiver of a corporation, or a partnership, or of individuals, shall be vested with title to the property.<sup>4</sup> Some statutes provide specifically when a receiver in supplementary proceedings shall be vested with the property.<sup>5</sup>

**§ 1213. Statutes—Defining Receiver.** Oregon—Lord's Oregon Laws, Vol. I, sec. 1107.

**§ 1214. Statutes—Requiring Statement of Assets by Defendant.** Indiana—Burns' Annotated Indiana Statutes (1914), sec. 1281a.

**§ 1215. Statutes—Requiring Statement of Assets by Receiver.** Connecticut—Receiver to file semiannual statements. General Statutes of Connecticut, ch. 72, "Receivers," sec. 1047.

**§ 1216. Statutes—Receiver for Estate of Absentee.** Massachusetts—Revised Statutes of Massachusetts (1902-1906), R. L. ch. 144, of the settlement of estates of absentees, sec. 1 et seq.

**§ 1217. Statutes—Receiver to Stay Waste.** Kentucky.—Kentucky Statutes, Carroll (1915), sec. 2336.

**§ 1218. Statutes—Requiring Positive Verification of Petition for Receiver.** Georgia—Park's Annotated Code of Georgia (1914), sec. 5544.

<sup>1</sup> Ohio General Code, sec. 1637, subsec. 2.

<sup>2</sup> Ohio General Code.

<sup>3</sup> See sec. 1003, *supra*.

<sup>4</sup> Digest of the Statutes of Arkansas (1904), ch. 125, "Receivers," (s), secs. 6348 and 6350.

<sup>5</sup> Parsons' New York Pocket Code Civil Procedure, sec. 2468.

§ 1219. **Statutes—Requiring Copy of Appointment of Receiver Filed.** Colorado—Receiver shall file in the office of the register copy of his appointment. Courtright's Colorado Statutes (1914), sec. 792.

§ 1220. **Statutes—Permitting Receiver to Transfer Registered Land.** Oregon—Lord's Oregon Laws, Vol. III, sec. 7256.

§ 1221. **Statutes—Receiver Issuing Receiver's Certificates.** Oregon—Lord's Oregon Laws, Vol. I, sec. 1110, "Payment of Wages." Lord's Oregon Laws, Vol. III, sec. 6965, "Payments for Repair of Railroad Bridges by Receiver."

§ 1222. **Statutes—Receiver to Preserve Harvester's Lien.** Oregon—Lord's Oregon Laws, Vol. III, sec. 7460.

§ 1223. **Statutes—Investment of Funds by Receiver.** California—Investment of funds. California Code of Civil Procedure, ch. V, "Receivers," sec. 569.

Idaho—Idaho Revised Codes (1906), sec. 4334.

Kansas—General Statutes of Kansas (1909), sec. 5866.

§ 1224. **Statutes—Certificate of Appointment Issued to Receiver.** Arizona—Revised Statutes of Arizona (1913), sec. 678.

§ 1225. **Statutes—Receiver's Fees.** Georgia—Park's Annotated Code of Georgia (1914), sec. 5489.

§ 1226. **Statutes—Counsel's Fees.** Georgia—Counsel's fees, how regulated. Park's Annotated Code of Georgia (1914), sec. 5488.

§ 1227. **Statutes—Providing for Vacation of Appointment of Receiver.** Illinois—Illinois Statutes, Annotated (1906), J. & A., sec. 3030 et seq.

Motion to vacate appointment. Oklahoma—Compiled Laws of Oklahoma (1909), sec. 5780.

# CHAPTER XXXVI

## BANKRUPTCY RECEIVERSHIPS—STATUTES <sup>1</sup>

### ANALYSIS

#### UNITED STATES BANKRUPTCY ACT AS AFFECTING RECEIVERSHIPS

§ 1228. History and Comment on United States Bankruptcy Act of 1898.

§ 1229. United States Bankruptcy Act as Affecting Receiverships (Text).

- (a) Power to Appoint Receivers or Marshals.
- (b) Authorization of Conduct of Bankrupt's Business.
- (c) Exercise Ancillary Jurisdiction.
- (d) Compensation of Trustees and Receivers—Ordinary.
- (e) Compensation of Trustees and Receivers—Conducting Business.
- (f) Compensation of Trustees and Receivers—Composition.
- (g) No Fees to Receivers Beyond Those Provided by Statute.
- (h) Judgments and Decrees in Bankruptcy of Circuit Court of Appeals—Final.
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§ 1230. History and Comment on United States General Orders in Bankruptcy.

§ 1231. United States General Orders in Bankruptcy as Affecting Receivership (Cited).

- (a) Rule XII.
- (a) Rule XXIII.

#### ENGLISH BANKRUPTCY ACT AS AFFECTING RECEIVERSHIPS

§ 1232. History and Comment on English Bankruptcy Act of 1914.

- (a) General Scope.
- (b) Board of Trade Regulations.
- (c) English Board of Trade—Connection with Bankruptcy.
- (d) Deeds of Arrangements Acts Related to Bankruptcy Act.
- (e) The Debtors' Act of 1869 Related to Bankruptcy Act.
- (f) Schedules under English Bankruptcy Act of 1914.

§ 1233. English Bankruptcy Act as Affecting Receivers (Text).

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<sup>1</sup> See "Receivers in Bankruptcy Proceedings," ch. XVII, vol. I, *infra*, for court decisions covering the various phases of the subject, including interpretation of the Bankruptcy Act.



Effect of Receiving Order.

Power to Rescind Receiving Order.

(b) Proceedings Consequent on Order.

First and Other Meetings of Creditors.

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(c) Interim Receiver.

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**§ 1235. English Bankruptcy Rules of 1915—As Affecting Receivers (Text).**

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§ 1236. Power to Prescribe Fees and Remuneration.

UNITED STATES BANKRUPTCY ACT AS AFFECTING  
RECEIVERSHIPS

§ 1228. History and Comment on United States Bankruptcy Act of 1898. Since the Constitution of the United States provides that Congress shall have the power \* \* \* "To establish \* \* \* uniform laws on the subject of bankruptcy throughout the United States,"<sup>1</sup> and since Congress has accordingly from time to time passed bankruptcy acts, we find our court decisions on the subject of bankruptcy largely made up of interpretations of the Bankruptcy Act, and in addition the application of legal and equitable principles to points which arise but are not covered by the bankruptcy act then in force. This being so, it will be seen that we have covered rather thoroughly in ch. XVII, Vol. I, of this work, the history of and comment on the United States Bankruptcy Act of 1898, as amended 1903 and 1910, in so far as such history and comment bears on the interpretation of the act as affecting receivers in bankruptcy proceedings. We therefore refer the reader to ch. XVII, Vol. I, of this work.

<sup>1</sup> Constitution of U. S., Art. I, sec. 8.

**§ 1229. United States Bankruptcy Act as Affecting Receiverships (Text):**

(a) POWER TO APPOINT RECEIVERS OR MARSHALS. Section 2. (3) Appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified.<sup>2</sup>

(15) Make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act.<sup>3</sup>

(b) AUTHORIZATION OF CONDUCT OF BANKRUPT'S BUSINESS. Section 2. (5) Authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates, and allow such officers additional compensation for such services, as provided in section forty-eight of this Act.<sup>4</sup>

(c) EXERCISE ANCILLARY JURISDICTION. Section 2. (20) Exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in another court of bankruptcy.<sup>5</sup>

(d) COMPENSATION OF TRUSTEES AND RECEIVERS—ORDINARY. Section 48. (a) Trustees shall receive for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and such commissions on all moneys disbursed or turned over to any person, including lien holders, by them, as may be allowed by the courts, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than fifteen hundred dollars, two per centum on moneys in excess of fifteen hundred dol-

<sup>2</sup> United States Bankruptcy Act of 1898, ch. II, sec. 2 (3); 30 U. S. Statutes at Large, ch. 541.

<sup>3</sup> United States Bankruptcy Act of 1898, ch. II, sec. 2 (15); 30 U. S. Statutes at Large, ch. 541.

<sup>4</sup> United States Bankruptcy Act

of 1898 as amended 1903 and 1910, ch. II, sec. 2 (5); 30 U. S. Statutes at Large, ch. 541; 32 U. S. Statutes at Large, ch. 487; 36 U. S. Statutes at Large, ch. 412.

<sup>5</sup> United States Bankruptcy Act of 1898, ch. II, sec. 2 (20).

lars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars. And in case of the confirmation of a composition after the trustee has qualified the court may allow him, as compensation, not to exceed one-half of one per centum of the amount to be paid the creditors on such composition.

(b) In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administering of any estate a greater amount than one trustee would be entitled to.

(c) The court may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

(d) Receivers or marshals appointed pursuant to section two, sub-division three, of this Act shall receive for their services, payable after they are rendered, compensation by way of commissions upon the moneys disbursed or turned over to any person, including lien holders, by them, and also upon the moneys turned over by them or afterwards realized by the trustees from property turned over in kind by them to the trustees, as the court may allow, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars: *Provided*, That in case of the confirmation of a composition such commissions shall not exceed one-half of one per centum of the amount to be paid creditors on such compositions: *Provided, further*, That when the receiver or marshal acts as a mere custodian and does not carry on the business of the bankrupt as provided in clause five of section two of this Act, he shall not receive nor be allowed in any form or guise more than two per centum on the first thousand dollars or less, and one-half of one per centum on all above one thousand dollars on moneys disbursed by him or turned over by him to the trustee and on moneys subsequently realized from property turned over by him in kind to the trustee: *Provided, further*, That before the allowance of compensation notice of application therefor, specifying the amount asked, shall be given to creditors in the manner indicated in section fifty-eight of this Act.

(e) COMPENSATION OF TRUSTEES AND RECEIVERS—CONDUCTING BUSINESS. Section 48. (e) Where the business is conducted by trustees, marshals, or receivers, as provided in clause five of section two of this Act, the court may allow such officers additional compensation for such services by way of commissions upon the moneys disbursed or turned over to any person, including lien holders, by them, and, in cases of receivers or marshals, also upon the moneys turned over by them or afterwards realized by the trustees from property turned over in kind by them to the trustees; such commissions not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars: *Provided*, That in case of the confirmation of a composition such commissions shall not exceed one-half of one per centum of the amount to be paid creditors on such composition: *Provided, further*, That before the allowance of compensation notice of application therefor, specifying the amount asked, shall be given to creditors in the manner indicated in section fifty-eight of this Act.

(f) COMPENSATION OF TRUSTEES AND RECEIVERS—COMPOSITION. For the Bankruptcy Law as to a confirmation of a composition after the trustee has qualified, see Sec. 48 (a) quoted above.

For the Bankruptcy Law as to a confirmation of a composition when trustees, marshals or receivers have been running a business, the rate shall be as set forth in Sec. 48 (e).

(g) NO FEES TO RECEIVERS BEYOND THOSE PROVIDED BY STATUTE. SEC. 72. That neither the referee, receiver, marshal, nor trustee shall in any form or guise receive, nor shall the court allow him, any other or further compensation for his services than that expressly authorized and prescribed in this Act.<sup>6</sup>

(h) JUDGMENTS AND DECREES IN BANKRUPTCY OF CIRCUIT COURT OF APPEALS FINAL. "SEC. 4. That judgments and decrees of the Circuit Courts of Appeals in all proceedings

<sup>6</sup> United States Bankruptcy Act    32 U. S. Statutes at Large, ch. 487;  
of 1898 as amended 1903 and 1910;    36 U. S. Statutes at Large, ch. 412.

and causes arising under an act to establish a uniform system of bankruptcy throughout the United States<sup>7</sup> approved July first, eighteen hundred and ninety-eight, and in all controversies arising in such proceedings and causes; \* \* \* and also in all causes arising under any amendment or supplement to any one of the aforementioned acts which has been heretofore or may hereafter be enacted, shall be final save only that it shall be competent for the Supreme Court to require by certiorari, upon the petition of any party thereto, that the proceeding, case, or controversy be certified to it for review and determination, with the same power and authority and with like effect as if taken to that court by appeal or writ of error.”<sup>8</sup>

(i) DEBTS NOT AFFECTED BY DISCHARGE IN BANKRUPTCY. Ch. 153.<sup>9</sup> An Act to amend section seventeen of the United States Bankruptcy Law of July first, eighteen hundred and ninety-eight, and amendments thereto of February fifth, nineteen hundred and three. \* \* \*

“SEC. 17. *Debts Not Affected by a Discharge.*—A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (first) are due as a tax levied by the United States, the State, county, district or municipality in which he resides; (second) are liabilities for obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for breach of promise of marriage accompanied by seduction, or for criminal conversation; (third) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (fourth) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.”<sup>10</sup>

<sup>7</sup> Amendment of 1916 to U. S. Judicial Code, sec. 4; 39 U. S. Statutes at Large, ch. 448, sec. 4, approved September 6, 1916.

<sup>8</sup> Amendment, of 1916 to U. S. Judicial Code, sec. 4; 39 U. S. Statutes at Large, ch. 448, sec. 4, approved September 6, 1916.

<sup>9</sup> Laws of 64th Congress, sess. II.

<sup>10</sup> Amendment of 1917 to Bankruptcy Act of 1898; 39 U. S. Statutes at Large, pt. I, p. 999; ch. 153 of the Laws of 64th Congress, sess. II.

**§ 1230. History and Comment on United States General Orders in Bankruptcy.** Section 30 of the United States Bankruptcy Act of 1898 provides as follows:

RULES, FORMS AND ORDERS.—(a) “All necessary rules, forms and orders as to procedure and for carrying this act into force and effect shall be prescribed, and may be amended from time to time by the Supreme Court of the United States.”

General Orders and Forms in Bankruptcy were accordingly adopted and established by the Supreme Court of the United States, November 28, 1898, and promulgated and published in 172 U. S. 653. These General Orders took the place of the orders established by the supreme court under the Bankruptcy Act of 1867. These General Orders in Bankruptcy promulgated by the United States Supreme Court are analogous to the General Rules in Bankruptcy issued by the Chancellor of England by authority of the English Bankruptcy Act.<sup>11</sup>

The English rules are, however, very much more extensive than the General Orders of the United States Supreme Court. Particularly is this true as to the matter of receiverships under the English Bankruptcy Act. Few of the provisions of the United States General Orders in Bankruptcy apply to the practice and procedure in receiverships under the Bankruptcy Act. The practice and procedure in the matter of receivership under the United States Bankruptcy Act is therefore governed by the ordinary usages and rules of equity, by the provisions of the Bankruptcy Act itself, and by such rules and regulations as each bankruptcy court may make from time to time. However, we cite Rules XII and XXIII below because they provide for certain actions of referees in bankruptcy, including the appointment of receivers.

**§ 1231. United States General Orders in Bankruptcy as Affecting Receivership<sup>12</sup> (Cited):**

<sup>11</sup> See these Rules, this chapter, secs. 1234 and 1235.

<sup>12</sup> We cite Rules XII and XXIII because they have reference to the

actions of referees in bankruptcy, including the appointment of receivers.

(a) **RULE XII.—DUTIES OF REFEREE.** See rule reported in ch. XVII, sec. 347, Vol. I, of this work.

(b) **RULE XXIII.—ORDERS OF REFEREE.** See rule reported in ch. XVII, sec. 345, Vol. I, of this work.

#### ENGLISH BANKRUPTCY ACT AS AFFECTING RECEIVERSHIPS

§ 1232. **History and Comment on English Bankruptcy Act of 1914.** (a) **General Scope.** The English Bankruptcy Act of 1914<sup>13</sup> became operative on the first day of January, 1915.<sup>14</sup> This act repealed the whole of the Bankruptcy Act of 1883<sup>15</sup> with certain exceptions.<sup>16</sup> Other acts relating to bankruptcy were also repealed by the Bankruptcy Act of 1914.<sup>17</sup> The Act of 1914, generally speaking, took the place of the Bankruptcy Act of 1883 and subsequent amendments to said Act of 1883.

The English Bankruptcy Act of 1914 is in its general scope and effect like the United States Bankruptcy Act of 1898 and its amendments. However, the English act in its provisions covers more contingencies and circumstances than does the United States Bankruptcy Act.

The English Bankruptcy Act not only differs from the United States Bankruptcy Act in leaving the appointment of the receiver to the board of trade and not the bankruptcy court, as does the United States Bankruptcy Act, but the English act, besides providing for an official receiver<sup>18</sup> provides:

(First) That the official receiver may be appointed interim receiver and this before a receiving order is made.<sup>19</sup>

<sup>13</sup> An act to consolidate the law relating to bankruptcy, passed August 10, 1914.

<sup>14</sup> 4 and 5 Geo. V, cap. 59; Bankruptcy Act of 1914, 169 (3).

<sup>15</sup> 46 and 47 Vic., cap. 52.

<sup>16</sup> Repeals under Bankruptcy Act of 1914, 168 and "The Sixth Schedule."

<sup>17</sup> Repeals under Bankruptcy Act of 1914, 168 and "The Sixth Schedule."

<sup>18</sup> English Bankruptcy Act of 1914, 3 et seq.

<sup>19</sup> English Bankruptcy Act of 1914, 8.



(Second) That the official receiver may on application of any creditor or creditors appoint a special manager to act until the trustee is appointed.<sup>20</sup>

The official receiver has no judicial functions as has the referee in bankruptcy under the United States Bankruptcy Act, but the English official receiver performs many duties of an administrative nature which are analogous to the administrative duties performed by the referee in bankruptcy under the United States Bankruptcy Act.

In addition to the provisions for the appointment of an interim receiver<sup>21</sup> and an official receiver,<sup>22</sup> we have in the English act provisions for the appointment of a special manager,<sup>23</sup> assistant official receiver,<sup>24</sup> and the authorization to the official receiver to act as a committee of inspection,<sup>25</sup> and authorization to the registrar to act as official receiver.<sup>26</sup>

**(b) Board of Trade Regulations.** The English Bankruptcy Rules of 1915. Rule No. 381 provides that "The Board of Trade may from time to time issue general orders or regulations, for the purpose of regulating any matters under the Act or these Regulations. These orders or regulations are administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the king's printers and purport to be issued under the authority of the board of trade."<sup>27</sup>

Board of Trade Regulations were accordingly issued by the inspector-general in bankruptcy of the board of trade, being regulations 1 to 55.

**(c) English Board of Trade—Connection with Bankruptcy.** The English Board of Trade occupies a very close

<sup>20</sup> English Bankruptcy Act of 1914, 10 (1) (2) (3).

<sup>21</sup> English Bankruptcy Act of 1914, 8.

<sup>22</sup> English Bankruptcy Act of 1914, 3 et seq.

<sup>23</sup> English Bankruptcy Act of 1914, 10 (1).

<sup>24</sup> English Rules in Bankruptcy (1915), Rules 315, 316, 317.

<sup>25</sup> English Rules in Bankruptcy (1915), Rule 324.

<sup>26</sup> English Rules in Bankruptcy (1915), Rule 317.

<sup>27</sup> Bankruptcy Rules (1915), 381.

official relation to the high court in the administration of the bankrupt's affairs and by the Bankruptcy Act, sec. 70: "Receivers of debtors' estates shall be appointed and removable by and shall act under the general authority and directions of the Board of Trade but shall be officers of the courts to which they are respectively attached."

The English Board of Trade is the successor of the Council for Trade and Plantations. The present board of trade was really created in 1782.<sup>28</sup> The board of trade was composed of "Lords of the Committee of Privy Counsel for the time being appointed for the consideration of matters relating to trade and foreign plantations."<sup>29</sup> The board of trade was originally purely consultative and advised the Crown. Recently, however, the board of trade has become an administrative and regulative office. In 1883 was created the bankruptcy department of the board of trade, the head of which is called the inspector-general in bankruptcy.

The other departments of the board of trade are the statistical department, railway department, marine department, harbour department, finance department and fisheries department. Thus the bankruptcy cases are brought in close touch with the board of trade.

**(d) Deeds of Arrangement Acts Related to Bankruptcy Act.** In 1887 was passed "An Act to provide for the Registration of Deeds of Arrangement."<sup>30</sup> On August 10, 1914, was passed "An Act to consolidate the law relating to Deeds of Arrangement."<sup>31</sup> This Deeds of Arrangement Act of 1914 has to do with cases of arrangements "made by, for or in respect of the affairs of a debtor for the benefit of his creditors generally<sup>32</sup> or made by, for or in respect of the

<sup>28</sup> Act 22, Geo. III, c. 82 (A. D. 1782).

<sup>29</sup> Harbour Transfer Act (1862), 25 and 26 Vic. c. 69.

<sup>30</sup> 50 and 51 Vic., cap. 57, passed September 16, 1887.

<sup>31</sup> 4 and 5 Geo. V, cap. 47.

<sup>32</sup> 4 and 5 Geo. V, cap. 47, 1 (1) (a).

affairs of a debtor who was insolvent at the date of the execution of the instrument for the benefit of any three or more of his creditors.”<sup>33</sup>

Such an arrangement and instrument evidencing such an arrangement must be made otherwise than in pursuance of the law for the time being in force relating to bankruptcy. In other words, such an arrangement made according to law prevents the debtor getting into the bankruptcy courts, prevents process of law being resorted to to collect such debts, provides equality among creditors, and in addition releases the debtor from his debts.

The arrangements with creditors provided for by the law of 1914 are an assignment of property,<sup>34</sup> a deed of or agreement for a composition,<sup>35</sup> and in cases where creditors of the debtor obtain any control over his property or business, a deed of inspectorship entered into for the purpose of carrying on or winding up a business,<sup>36</sup> and a letter of license authorizing the debtor or any other person to manage, carry on, release or dispose of a business with a view to the payment of debts;<sup>37</sup> and any arrangement or instrument entered into for the purpose of carrying on or winding up the debtor's business or authorizing the debtor or any other person to manage, carry on, realize or dispose of the debtor's business with a view to the payment of his debts.<sup>38</sup> This English Deeds of Arrangement Act corresponds very generally with our state insolvency laws, which provide for the filing of deeds of assignment.

The Deeds of Arrangement Act of 1914 provides in sec. 28 as follows: “Rules for carrying this Act into effect may be made in like manner as rules may be made under and for the purposes of the Judicature Acts 1873 to 1910.” In pursuance

<sup>33</sup> 4 and 5 Geo. V, cap. 47, 1 (1)  
(b).

<sup>34</sup> 4 and 5 Geo. V, cap. 47, 1 (2)  
(a).

<sup>35</sup> 4 and 5 Geo. V, cap. 47, 1 (2)  
(b).

<sup>36</sup> 4 and 5 Geo. V, cap. 47, 1 (2)  
(c).

<sup>37</sup> 4 and 5 Geo. V, cap. 47, 1 (2)  
(d).

<sup>38</sup> 4 and 5 Geo. V, cap. 47, 1 (2)  
(e).

to this sec. 28 and to the authority granted in the various judicature acts, the rules were made and promulgated December 28, 1914.

In addition to the Deeds of Arrangement Rules (1915), we find Forms. Sec. 28 of the Deeds of Arrangement Act provides as shown above for the promulgation of rules for the carrying into effect the act, and by sec. 30 (1) of the Deeds of Arrangement Act (1914), "Rules" includes forms.

In addition to the rules for carrying into effect the Deeds of Arrangement Act (1914) and the forms, certain orders as to fees have been made by the Lord High Chancellor, by and with the advice and consent of certain of the judges of the Supreme Court of Judicature and with the concurrence of the Lords Commissioners of His Majesty's Treasury. In addition to the orders as to fees, a schedule of fees has been promulgated.

**(e) The Debtors' Act of 1869 Related to Bankruptcy Act.** The English Debtors' Act of 1869 was passed in response to a demand created by Charles Dickens' stories of the horrors and scandals connected with imprisonment for debt. The Debtors' Act of 1869 as it existed at the passage of the English Bankruptcy Act of 1914 is kept in full force and effect, except secs. 11, 12, 14, 15 and 16. These sections of the Debtors' Act of 1869 have mainly to do with the punishment of fraudulent debtors. Such offenses under the Bankruptcy Act of 1914 may be prosecuted summarily by the board of trade, the official receiver or the director of public prosecutions. On the 7th day of January, 1870, the High Court of Chancery promulgated general orders under the Debtors' Act of 1869 which are now in effect. Likewise on the law side of the case general rules under the Debtors' Act of 1869 were promulgated at Michaelmas term, 1869.

**(f) Schedules under English Bankruptcy Act of 1914.** Frequently an act of Parliament has annexed to it a schedule or schedules, added for the purpose of stating specific matters.

A schedule in an act of Parliament is a mere question of drafting—a mere question of words. “The schedule is as much a part of the statute and is as much an enactment as any other part.”<sup>39</sup> The schedules of the English Bankruptcy Act contain a number of provisions as to how the Bankruptcy Act shall be carried out, as follows:

First schedule—Meetings of creditors.

Second schedule—Proof of debts.

Third schedule—List of metropolitan county courts.

Fourth schedule—Re-enactment of provisions relating to pre-1884 bankruptcies.

Fifth schedule—Statutes relating to unclaimed dividends.

Sixth schedule—Enactments repealed.

**§ 1233. English Bankruptcy Act as Affecting Receivers (Text):**

(a) RECEIVING ORDER.<sup>40</sup> *Jurisdiction to make receiving order.* 3. Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy the court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate.

*Effect of receiving order.* 7. (1) On the making of a receiving order an official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any action or other legal proceedings, unless with the leave of the court and on such terms as the court may impose.

(2) But this section shall not affect the power of any secured creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it if this section had not been passed.

<sup>39</sup> Attorney General v. Lamplough, 1878, 3 Ex. D. 214, at 229.

<sup>40</sup> English Bankruptcy Act of 1914, 3 et seq.

*Power to rescind receiving order in certain cases.* 12. If in any case where a receiving order has been made on a bankruptcy petition it appears to the court by which the order was made, upon an application by the official receiver, or any creditor or other person interested, that a majority of the creditors in number and value are resident in Scotland or in Ireland, and that from the situation of the property of the debtor, or other causes, his estate and effects ought to be distributed among the creditors under the law relating to bankruptcy in Scotland or Ireland, the court, after such inquiry as it may think fit, may rescind the receiving order and stay all proceedings on, or dismiss the petition upon such terms, if any, as the court may think fit.

(b) PROCEEDINGS CONSEQUENT ON ORDER.<sup>41</sup> *First and other meetings of creditors.* 13. (1) As soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be accepted, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

(2) With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the First Schedule to this Act shall be observed.

*Debtor's statement of affairs.* 14. (1) Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be so submitted within the following times, namely:—

(i) If the order is made on the petition of the debtor, within three days from the date of the order:

<sup>41</sup> English Bankruptcy Act of 1915, 13 et seq.

(ii) If the order is made on the petition of a creditor, within seven days from the date of the order: but the court may, in either case for special reasons, extend the time.

(3) If the debtor fails without reasonable excuse to comply with the requirements of this section, the court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.

(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom, but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punishable accordingly on the application of the trustee or official receiver.

(c) INTERIM RECEIVER.<sup>42</sup> *Power to appoint interim receiver.*  
8. The court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition, and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

(d) OFFICIAL RECEIVERS AND STAFF OF BOARD OF TRADE.<sup>43</sup> *Official receivers of debtors' estates.* 70. (1) There shall continue to be official receivers of debtors' estates, who shall be appointed and removable by, and shall act under the general authority and directions of, the Board of Trade, but shall also be officers of the courts to which they are respectively attached.

(2) The number of official receivers, and the districts to be assigned to them, shall be fixed by the Board of Trade, with the concurrence of the Treasury. One person only shall be appointed for each district unless the Board of Trade, with the concurrence of the Treasury, otherwise direct; but the same person may, with the like concurrence, be appointed to act for more than one district.

(3) Where more than one official receiver is attached to the court, such one of them as is for the time being appointed by the court for any particular estate shall be the official receiver

<sup>42</sup> English Bankruptcy Act of 1914, 8.

<sup>43</sup> English Bankruptcy Act of 1914, 70 et seq.

for the purposes of that estate. The court shall distribute the receiverships of the particular estates among the official receivers in the prescribed manner.

*Deputy for official receiver.* 71. (1) The Board of Trade may by order direct that any of its officers mentioned in the order shall be capable of discharging the duties of any official receiver during any temporary vacancy in the office, or during the temporary absence of any official receiver through illness or otherwise.

(2) The Board of Trade may, on the application of an official receiver, at any time by order nominate some fit person to be his deputy, and to act for him for such time not exceeding two months as the order may fix, and under such conditions as to remuneration and otherwise as may be prescribed.

(3) The Board of Trade may by order, for reasons to be stated therein, direct in any special case that any of its officers mentioned in the order shall be capable of discharging any portion of the duties of the official receiver for the performance of which it is, in the opinion of the Board, expedient that some person other than the official receiver be appointed, provided that no additional expense be thereby incurred.

*Status of official receiver.* 72. (1) The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of his estate.

(2) An official receiver may, for the purpose of affidavits verifying proofs, petitions, or other proceedings under this Act, administer oaths.

(3) All provisions in this or any other Act referring to the trustee in a bankruptcy shall, unless the context otherwise requires, or the Act otherwise provides, include the official receiver when acting as trustee.

(4) The trustee shall supply the official receiver with such information, and give him such access to and facilities for inspecting the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Act.

*Power to appoint special manager.*<sup>44</sup> 10. (1) The official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors gen-

<sup>44</sup> English Bankruptcy Act of 1914, 10 (1) (2) (3).



erally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.

(2) The special manager shall give security and account in such manner as the Board of Trade may direct.

(3) The special manager shall receive such remuneration as the creditors may, by resolution at an ordinary meeting determine, or in default of any such resolution, as may be prescribed.

*Duties of official receivers as regards the debtor's conduct.*

73. As regards the debtor, it shall be the duty of the official receiver—

(a) To investigate the conduct of the debtor and to report to the court, stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanor under this Act or any enactment repealed by this Act, or which would justify the court in refusing, suspending or qualifying an order for his discharge;

(b) To make such reports concerning the conduct of the debtor as the Board of Trade may direct;

(c) To take such part as may be directed by the Board of Trade in the public examination of the debtor;

(d) To take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct.

*Duties of official receiver as to debtor's estate.* 74. (1) As regards the estate of a debtor, it shall be the duty of the official receiver—

(a) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;

(b) To authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do;

(c) To summon and preside at the first meeting of creditors;

(d) To issue forms of proxy for use at the meetings of creditors;

(e) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;

(f) To advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;

(g) To act as trustee during any vacancy in the office of trustee.

(2) For the purpose of his duties as interim receiver or manager, the official receiver shall have the same powers as if he were a receiver and manager appointed by the High Court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Board of Trade otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods:

Provided that, when the debtor can not himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3) Every official receiver shall account to the Board of Trade and pay over all moneys and deal with all securities in such manner as the Board from time to time direct.

*Power for Board of Trade to appoint officers.* 75. The Board of Trade may, with the approval of the Treasury as to number, appoint such officers, including official receivers, clerks, and servants, as may be required by the Board for the execution of this Act, and may dismiss any such officer, clerk or servant.

*Powers of official receiver before trustee appointed.* The official receiver, before the appointment of a trustee shall have all the power of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.<sup>45</sup>

*Duties of official receiver—Meeting of creditors.*<sup>46</sup> 1. The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the court for any special reason deem it expedient that the meeting be summoned for a day later.

2. The official receiver shall summon the meeting by giving

<sup>45</sup> English Bankruptcy Act of 1914, Second Schedule, 28.

<sup>46</sup> English Bankruptcy Act of 1914, First Schedule, 1, 2, 3, 4, 5, 7.

not less than six clear days' notice of the time and place thereof in the *London Gazette* and in a local paper.

3. The official receiver shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs, a notice of the time and place of the first meeting of creditors, accompanied by a summary of the debtor's statement of affairs, including the cause of his failure, and any observations thereon which the official receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

4. The meeting shall be held at such place as is in the opinion of the official receiver most convenient for the majority of creditors.

5. The official receiver or the trustee may at any time summon a meeting of creditors, and shall do so whenever so directed by the court, or so requested by a creditor in accordance with the provisions of this Act.

7. The official receiver, or some person nominated by him, shall be the chairman at the first meeting. The chairman at subsequent meetings shall be such person as the meeting by resolution appoint.

**§ 1234. History and Comment on English Bankruptcy Rules of 1915.** Section 132 of the English Bankruptcy Act provides for the Lord Chancellor, with the concurrence of the president of the board of trade, making general rules for the carrying into effect the objects of the Bankruptcy Act. Such rules shall be laid before Parliament and shall be judicially noticed and shall have effect as if enacted by the Bankruptcy Act. These rules were accordingly issued, becoming effective on the first day of January, 1915. These rules are called Bankruptcy Rules of 1915, divided into six parts and having an appendix.

Part I. Preliminary.

Part II. General procedure.

Part III. Proceedings in bankruptcy.

Part IV. Official receivers, trustees, special managers, security by trustee or special manager, gazetting, registrar's books and returns, accounts and audit, unclaimed funds.

Part V. Judgment debtors.

Part VI. Miscellaneous.

Appendix—Part I. Forms.

Part II. Scale of solicitors' costs.

The Rules of Bankruptcy of 1915 correspond to a certain extent to the General Orders in Bankruptcy promulgated by the United States Supreme Court, but the English Rules cover the subject more in detail.

The forms provided for in Appendix, Part I, are authorized by sec. 5 (1) (2) of the Bankruptcy Rules of 1915.

Scale of solicitors' costs is regulated and prescribed in the Appendix to the Bankruptcy Rules authorized in sec. 133 of the Bankruptcy Act.

### § 1235. English Bankruptcy Rules of 1915—As Affecting Receivers (Text).

(a) POWER TO MAKE GENERAL RULES.<sup>47</sup> 132. (1) The Lord Chancellor may, with the concurrence of the President of the Board of Trade, make general rules for carrying into effect the objects of this Act:

Provided that the general rules so made shall not extend the jurisdiction of the court.

(2) All general rules made under this section shall be laid before Parliament within three weeks after they are made if Parliament is then sitting, and, if Parliament is not then sitting, within three weeks after the beginning of the then next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act.

(b) RULES AFFECTING INTERIM RECEIVER.<sup>48</sup> *Appointment of interim receiver.* Form 14. 160. After the presentation of a petition, upon the application of a creditor, or of the debtor himself, and upon proof by affidavit of sufficient grounds for the appointment of the Official Receiver as Interim Receiver of the property of the debtor, or any part thereof, the Court may, if it thinks fit, and upon such terms as may be just, make such appointment.

<sup>47</sup> English Bankruptcy Act of 1914, 132.

<sup>48</sup> Bankruptcy Rules (1915), Rule 160 et seq.

*Form and contents of order.* Form 14. 161. Where an order is made appointing the Official Receiver to be Interim Receiver of the property of the debtor, such order shall bear the number of the petition in respect of which it is made, and shall state the locality of the property of which the Official Receiver is ordered to take possession.

*Deposit.* 162. Before any such order is issued, the person who has made the application therefor shall deposit with the Official Receiver the sum of 5 £. towards the prescribed fee for the Official Receiver, and such further sum as the Court shall direct for the expenses which may be incurred by him.

*Further deposit necessary.* 163. If the sum of 5 £., and such further sum so to be deposited for the expenses which may be incurred by the Official Receiver, shall prove to be sufficient, the person, on whose application the order has been made, shall from time to time deposit with the Official Receiver such additional sum as the Court may, on the application of the Official Receiver, from time to time direct; and such sum shall be deposited within twenty-four hours after the making of the order therefor. If such additional sum shall not be so deposited, the order appointing the Interim Receiver may be discharged by the Court.

*Repayment of deposit.* 164. If an order appointing an Interim Receiver is followed by a receiving order, the deposits made by the creditor on whose application such Interim Receiver was appointed, shall be repaid to him (except and so far as such deposits may be required by reason of insufficiency of assets for the payment of the fees chargeable, and the expenses incurred by the Interim Receiver), out of the proceeds of the estate in the order of priority prescribed by these Rules.

*Damages if petition dismissed.* 165. Where, after an order has been made appointing an Interim Receiver, the petition is dismissed, the Court shall, upon application to be made within 21 days from the date of the dismissal thereof, adjudicate, with respect to any damages or claim thereto arising out of the appointment, and shall make such order as the Court thinks fit; and such decision or order shall be final and conclusive between the parties, unless the order be appealed from.

(c) RECEIVING ORDER.<sup>40</sup> *Contents. Forms 29, 30, 31.* 179. When a receiving order is made on a creditor's petition there shall

<sup>40</sup> English Bankruptcy Rules (1915), Rule 179 et seq.

be stated in the receiving order the nature and date, or dates, of the act, or acts, of bankruptcy upon which the order has been made. Every order shall contain at the foot thereof a notice requiring the debtor to attend on the Official Receiver forthwith on the service thereof at the place mentioned therein. Cf. B. A. 1914, sec. 3.

*Preparation.* 180. Every receiving order, and order for the appointment of the Official Receiver as Interim Receiver of a debtor's property, shall be prepared or, if otherwise prepared, settled by the Registrar, and, in cases in which printed forms can be conveniently used, may be partly in print and partly in writing. Where the petitioner is represented by a solicitor the receiving order shall be indorsed with the name and address of such solicitor.

*Transmission of copy to official receiver.* 181. A copy of every receiving order, and order for the appointment of the Official Receiver as Interim Receiver of the debtor's property, sealed with the seal of the Court, shall forthwith be sent by post or otherwise by the Registrar to the Official Receiver.

*Service of receiving order.* 182. The Official Receiver shall cause a copy of the receiving order sealed with the seal of the Court to be served on the debtor.

*Service where debtor abroad.* 183. Where a debtor against whom a receiving order has been made is not in England, the Court may order service on the debtor of the receiving order, order of adjudication, order to attend the public examination or any adjournment thereof, or of any other order made against, or summons issued for the attendance of the debtor, to be made within such time and in such manner and form as it shall think fit.

*Receiving order on bankruptcy notice.* 184. A receiving order shall not be made against a debtor on a petition in which the act of bankruptcy alleged is non-compliance with a bankruptcy notice within the appointed time, where such debtor shall have applied to set aside such notice until after the hearing of the application, or where the notice has been set aside, or during a stay of the proceedings thereon; but in such case the petition shall be adjourned or dismissed as the Court may think fit.

*Stay of proceedings.* 185. There may be included in a receiving order an order staying any action or proceeding against the debtor or staying proceedings generally.

*Advertisement. Form 200 (1). Forms 32, 33. 186. (1)* Where a receiving order is made, in the High Court the Senior Bankruptcy Registrar, and in a County Court the Registrar shall forthwith give notice thereof to the Board of Trade.

(2) The Official Receiver shall forthwith send notice thereof to such local paper as the Board of Trade may from time to time direct, or in default of such direction, as he may select.

*Costs of petition, etc. 187. (1)* The costs of all proceedings under the Act, down to and including the making of a receiving order, shall be borne by the party prosecuting the same, unless the Court shall order that the debtor shall pay the whole or any part of them, or, in the case of a receiving order being made on a debtor's petition while a creditor's petition against such debtor is pending, that they shall be paid out of the estate. When a receiving order is made on a creditor's petition the costs of the petitioning creditor (including the costs of the bankruptcy notice [if any] sued out by him) shall be taxed and be payable out of the estate.

(2) When the proceeds of the estate are not sufficient for the payment of any costs necessarily incurred by the Official Receiver (in excess of the deposit) between the making of a receiving order and the conclusion of the first meeting of creditors, the Court may order such costs to be paid by the party prosecuting the proceedings.

*Applications to rescind receiving order, to stay proceedings thereunder, or to annul adjudication. 188.* An application to the Court to rescind a receiving order or to stay proceedings thereunder, or to annul an adjudication, shall not be heard except upon proof that notice of the intended application, and a copy of the affidavits in support thereof have been duly served upon the Official Receiver. Unless the Court gives leave to the contrary, notice of any such application shall be served on the Official Receiver not less than seven days before the day named in the notice for hearing the application. Pending the hearing of the application, the Court may make an interim order staying such of the proceedings as it thinks fit.

(d) OFFICIAL RECEIVERS.<sup>50</sup> *Appointment. 306. (1)* Judicial notice shall be taken of the appointment of the Official Receivers appointed by the Board of Trade.

(2) When the Board of Trade, under the powers given by

<sup>50</sup> English Bankruptcy Rules (1915), Rule 306 et seq.

section 71 of the Act, appoints any person to act as deputy for, or in the place of an Official Receiver, notice thereof shall be given by letter to the Registrar of the Court to which such Official Receiver is or was attached. The latter shall specify the duration of such acting appointment.

(3) Any person so appointed shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of an Official Receiver.

*Removal.* 307. (1) An Official Receiver may be removed from his office by an order of the Board of Trade. Notice of an order removing an Official Receiver shall be communicated by letter to the Registrar of the Court to which the Official Receiver was attached.

(2) Where an Official Receiver is removed, dies, or resigns, all estates, rights, and powers vested in him shall, without any conveyance or transfer, vest in such Official Receiver as the Board of Trade may appoint.

*Assignment of estates to official receivers.* *Form 122.* 308. When there are two or more Official Receivers attached to the district of the same Court the estates shall be assigned to such of them and in such manner as the Board of Trade shall by any general or special direction require. Provided that the Board of Trade may at any time require that an estate which has been assigned to one of the Official Receivers of the district be transferred either permanently or for special purposes of administration to one of the other Official Receivers. In such cases the Registrar shall transfer the receivership of that estate to the Official Receiver designated by the Board of Trade.

*Power of one official receiver to take the business of another.* 309. When there are two or more Official Receivers attached to the district of the same Court, any one of them shall (subject to the directions and control of the Board of Trade) have power without any transfer of the Receivership of an estate to take and perform any business and duties of any other Receiver.

*Officers of board of trade and clerks of official receivers in certain cases to act for official receivers.* 310. In the absence of the Official Receiver to whom an estate has been assigned, any officer of the Board of Trade duly authorised for the purpose by the Board of Trade, and any clerk of the Official Receiver duly authorised by him in writing, may by leave of the Court act on behalf of the Official Receiver, and take part for him in the public examination of the debtor, in any exam-



ination under section 25 of the Act, and on any unopposed application to the Court.

*Duties as to debtor's statement of affairs. Form 34.* 311.

(1) As soon as the Official Receiver receives notice that he has been appointed to the Receivership of an estate, he shall furnish the debtor with a copy of instructions for the preparation of his statement of affairs.

(2) The Official Receiver or some person deputed by him shall also forthwith hold a personal interview with the debtor for the purpose of investigating his affairs and determining whether the estate should be administered under section 129 of the Act.

(3) It shall be the duty of the debtor to attend at such time and place as the Official Receiver may appoint.

*Subsistence allowance to debtor.* 312. Subject to any general or special directions which the Board of Trade may give, the Official Receiver, while in the possession of the property of a debtor, may make him such allowance out of his property for the support of himself and his family as may be just. In fixing the amount of such allowance the assistance rendered by the debtor in the management of his business or affairs may be taken into account.

*Special report as to person employed to assist debtor.* 313. Whenever, under the powers given by section 74 of the Act, the Official Receiver employs any person to assist the debtor in the preparation of his statement of affairs he shall forthwith report the matter by letter to the Board of Trade, justifying his action therein and specifying the remuneration to be allowed to such person.

*Use of proxies by deputy.* 314. Where an Official Receiver who holds any proxies can not conveniently attend any meeting of creditors, at which such proxy or proxies might be used, he may depute some person in his employment or under his official control, or some officer of the Board of Trade, by writing under his hand, to attend such meeting and use such proxies on his behalf, and in such manner as he may direct.

*Personal performance of duties.* 315. The Board of Trade may, by general or special directions, determine what acts or duties shall be performed by the Official Receiver in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ or under his official control.

(e) ASSISTANT OFFICIAL RECEIVERS.<sup>51</sup> 316. An assistant Official Receiver, appointed by the Board of Trade, shall be an officer of the Court, like the Official Receiver to whom he is assistant, and, subject to the directions of the Board of Trade, he may represent the Official Receiver in all proceedings in Court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of an assistant Official Receiver, and he may be removed in the same manner as is provided in the case of an Official Receiver.

*Registrar to act in sudden emergency.* 317. In any case of sudden emergency, where there is no Official Receiver capable of acting, any act or thing required or authorised to be done by an Official Receiver may be done by the Registrar.

*Removal of special manager.* 318. When the Official Receiver appoints a special manager he may at any time remove him if his employment seems unnecessary or unprofitable to the estate, and he shall remove him, if so required by a special resolution of the creditors.

(f) APPLICATION BY OFFICIAL RECEIVER TO COURT. *Mode of application to Court.* 319. Applications by the Official Receiver to the Court may be made personally, and without notice or other formality; but the Court may in any case order that an application be renewed in a formal manner, and that such notice thereof be given to any person likely to be affected thereby as the Court may direct.

*Evidence on application by official receiver.* 320. Where for the purposes of any application to the Court by the Official Receiver for directions, or to adjudge a debtor bankrupt, or for leave to disclaim a lease, or for an extension of time to apply for leave to disclaim a lease, or for an order to take criminal proceedings against a bankrupt, or to commit a bankrupt, it is necessary that evidence be given by him in support of such application, such evidence may be given by a report of the Official Receiver to the Court, and need not be given by affidavit, and such report of the Official Receiver to the Court shall be received by the Court as prima facie evidence of the matters reported upon.

*Application for directions.* 321. In any case of doubt or difficulty or in any matter not provided for by the Act or these Rules relating to any proceeding in Court, the Official Receiver may apply to the Court for directions.

<sup>51</sup> English Bankruptcy Rules (1915), Rule 316.

(g) DUTIES OF OFFICIAL RECEIVER WHERE NO ASSETS. 322. Where an debtor against whom a receiving order has been made has no available assets, the Official Receiver shall not be required to incur any expense in relation to his estate without the express directions of the Board of Trade.

(h) ACCOUNTING BY OFFICIAL RECEIVER. 323. (1) Where a composition or scheme is sanctioned by the Court the Official Receiver shall account to the debtor, or, as the case may be, to the trustee under the composition of scheme.

(2) Where a debtor is adjudged bankrupt, and a trustee is appointed, the Official Receiver shall account to the trustee in the bankruptcy.

(3) If the debtor, or, as the case may be, the trustee, is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who shall take such action (if any) thereon as it may deem expedient.

(4) The provisions of this part of these Rules as to trustees and their accounts shall not apply to the Official Receiver when acting as trustee, but he shall account in such manner as the Board of Trade may from time to time direct.

(i) MAY ACT FOR BOARD OF TRADE WHERE NO COMMITTEE OF INSPECTION.<sup>52</sup> 324. Where there is no committee of inspection any functions of the committee of inspection which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the Official Receiver.

(j) TRADING ACCOUNT OF DEBTOR.<sup>53</sup> 325. The debtor shall, on the request of the Official Receiver, furnish him with trading and profit and loss accounts, and a cash and goods account for such period not exceeding two years prior to the date of the receiving order as the Official Receiver shall specify. Provided that the debtor shall, if ordered by the Court so to do, furnish such accounts as the Court may order for any longer period. If the debtor fails to comply with the requirements of this Rule the Official Receiver shall report such failure to the Court, and the Court shall take such action on such report as the Court shall think just.

<sup>52</sup> English Bankruptcy Rules (1915), Rule 324.

<sup>53</sup> English Bankruptcy Rules (1915), Rule 325.

(k) **LIABILITY FOR COSTS, EXPENSES, AND DAMAGES.**<sup>54</sup> 326. The following provisions shall apply to every case in which proceedings are taken either by action, motion, or in any other manner, against any Official Receiver in respect of anything done or default made by him, when acting, or in the *bona fide* and reasonable belief that he is acting, in pursuance of the Act, or in execution of the powers given to Official Receivers by the Act:—

(1) Subject to the provisions of the next following subsection, the costs, damages, and expenses which the Official Receiver may have to pay, or to which he may be put under such proceedings, shall be paid out of the estate of the debtor.

(2) As soon as any such proceedings are commenced it shall be the duty of the Official Receiver to report the same to the Board of Trade, who shall determine whether or not such proceedings shall be resisted or defended.

(3) The Official Receiver shall not, unless the Court shall otherwise order, be entitled to be paid out of the estate any costs or expenses which he may have to pay or bear in consequence of resisting or defending any such proceedings, unless the Board of Trade have determined that such proceedings shall be resisted or defended.

for any reasonable adjournment motion, or other summary

(4) The Official Receiver shall, if necessary, apply to the Court for any reasonable adjournment of any motion, or other summary proceedings before a Court having jurisdiction in bankruptcy, pending the determination of the Board of Trade upon the question whether such motion or proceedings should be resisted or defended. And the Court may grant an adjournment upon such terms as it shall think fit.

(5) If such proceedings are commenced before the appointment of a trustee by the creditors, or before the approval of a composition or scheme, the Official Receiver may, before putting the trustee appointed by the creditors, or in the case of a composition the debtor himself into possession of the debtor's property, retain the whole or some part of the debtor's estate according as the Board of Trade shall in each case direct, to meet the damages, costs, or expenses which the Official Receiver may have to pay or bear in consequence of the said proceedings. If such proceedings are commenced after the appointment of

<sup>54</sup> English Bankruptcy Rules (1915), Rule 326.

a trustee by the creditors, or after the approval of a composition or scheme, the Official Receiver shall forthwith give notice of such proceedings to the trustee, or other person in whom the estate of the debtor may be vested (including, where necessary, the debtor himself), and the estate of the debtor shall, as from the date of such notice, be deemed to be charged with the payment of the said damages, costs and expenses.

**§ 1236. Power to Prescribe Fees and Remuneration.**

SEC. 133. (1) The Lord Chancellor may with the sanction of the Treasury prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Act; and the Treasury shall direct by whom and in what manner they are to be collected and accounted for, and to what account they shall be paid.

Acting in accordance with this provision of the Bankruptcy Act, the Lord High Chancellor did on the 28th day of December issue an order as to fees and percentages.

# Trading With the Enemy and Custodians of Alien Property

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## PREFATORY NOTE

No treatise on the law of receivers published during the world war would be complete without a chapter on the subjects of Trading With the Enemy and Custodians of Enemy Property, because the taking over of enemy property by a belligerent government in time of war offers a very close analogy to the taking over of property in litigation by a court of law; and the functions of an alien property custodian are largely those of a receiver.

It is the first purpose of the following chapter to cover the appointment, powers and duties of custodians of enemy property as provided for in the United States and English Trading With the Enemy Acts, and in addition to set forth the duties of holders of enemy property and the rights of holders of claims against enemy property.

In order to intelligently present the subject of Alien Property Custodian, it has seemed necessary to touch generally upon the subject of Trading With the Enemy. Accordingly, we have presented in this chapter memoranda of American decisions at common law on the subject, and English decisions under the English Trading With the Enemy Act. We have also printed the full text of the United States act and indexed the same for ready reference, also the President's

Executive Order following the act. The English act we have merely cited.

In giving the history of the act and in commenting on its various provisions, we have quoted freely from Mr. Charles Warren, Assistant Attorney General of the United States, who drafted the act, explained and presented it to the various committees and subcommittees of the House and Senate. We also take pleasure in giving to Mr. Warren full credit for the memoranda of English and American decisions above mentioned, which were gathered together by him and appeared in the government Reports of Hearings before the various committees of Congress.

## CHAPTER XXXVII

### TRADING WITH THE ENEMY AND CUSTODIANS OF ALIEN PROPERTY

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**TRADING WITH THE ENEMY—AMERICAN DECISIONS AT  
COMMON LAW <sup>1</sup>**

**§ 1237. Trading With the Enemy Unlawful at Common Law.** Said Hon. Charles Warren, Assistant Attorney General of the United States, concerning trading with the enemy, when presenting his draft of the Trading With the Enemy Act to the subcommittee of the Committee on Commerce of the United States as follows:<sup>2</sup>

“Trade with the enemy is unlawful under the common law both in England and the United States. In England it has always been a common-law criminal offense (*Regina v. Castro* [1880], 5 Q. B. D. 490). In the United States, so far as such trade is criminal, it must be made so by federal legislation, there being no common law of crimes. Such trade has a civil aspect—being unlawful, the acts of all parties engaging in such trade are void, or their rights and remedies are suspended during the war. It has also a federal fiscal aspect, in that the United States may cause to be forfeited in the courts all property concerned in the unlawful trade.

<sup>1</sup> The memorandum of American cases which is herewith presented is taken from Assistant Attorney General Warren's list of cases as presented by him to the various committees of congress at the hearings on the bill. See Hearings before the Subcommittee of the Committee on Com-

merce, United States Senate, 65th Congress, 1st Session, on H. R. 4960.

<sup>2</sup> Printed in “Hearings before the Subcommittee of the Committee on Commerce of the Senate on H. R. 4960,” 65th Congress, 1st Session; also in Senate Report No. 113, 65th Congress, 1st Session.

“The questions of what constitutes trade with the enemy and what constitutes an enemy within the purview of the illegal trade are settled by the decisions of the English and of the American courts. These decisions constitute part of the common law of the two countries. Strictly speaking, they are not founded on international law. They are purely domestic decisions, founded on such view of public policy as the courts of each country decide to adopt, paying attention, however, to the general consensus of other countries as to what shall constitute a wise public policy in dealings affecting outside countries.

“It follows that when the legislature of a country enacts a statute relative to trade with the enemy containing provisions differing from the law laid down by the courts, it is not violating or departing from international law. It is simply expressing its views as to the need of change in the domestic law of the country. Each country must decide for itself what it shall regard as unlawful trade with the enemy, and also what persons it shall regard, for the purposes of such trade, as enemy.

“Changes in economic, commercial, financial, military, naval and political conditions may make to highly necessary that doctrines as to trade with the enemy laid down by our courts a century ago should be modified by the legislature either by making them more stringent or less stringent, according to the needs and conditions of the present day. The complexity of modern business demands far greater stringency in certain directions than the old cases decided by the courts provided for. On the other hand, the more enlightened views of the present day as to treatment of enemies make possible certain relaxations in the old law.

“In former days trade consisted wholly in the actual transfer and transport of commodities. Today a form of trade even more helpful to the enemy consists of transfer of credits and money by letter, cable or wireless. Hence, while formerly the mere accumulation of enemy property or funds in this country did not assist the enemy materially, so long as it remained here, now with the ready ease by which credits may be trans-

ferred and funds used it becomes just as important to prevent an enemy from building up, using or transferring his credit or credits as from actually transferring physical property. Hence much more rigid supervision or prevention of such transactions becomes necessary.

“So also with the greater ease of intercommunication between countries, it may become necessary to expand the class of persons who, within the purview of unlawful trade with the enemy, shall be deemed “enemy.” Even under the old court decisions the term “enemy” (when used in connection with trade with the enemy) was not confined to citizens of the enemy nation; it applied under certain circumstances to neutral and their business within the enemy country, and even to our own citizens when having business or property in the enemy country. For these reasons a modern trading with the enemy act must define the term “enemy” according to the particular conditions confronting each country so legislating, and likewise must on the same lines define the particular acts which it thinks necessary to forbid as unlawful trade. It was my intent in drafting this bill to make it as little restrictive of American commerce and as liberal toward the enemy private person as was compatible with the safety of the United States and with justice to American interests.”

**§ 1238. Confiscation of Enemy Property During War.** *Miller v. United States* (1870), 11 Wall. 268, 305, 306, 20 L. ed. 135: “It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property. In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy’s country, no matter what his nationality. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which, by depriving an enemy of property within reach of his power, whether within his territory or without it, impairs his ability

to resist the confiscating government, while at the same time it furnishes to that government means for carrying on the war. Hence any property which the enemy can use, either by actual appropriation or by the exercise of control over its owner, or which the adherents of the enemy have the power of devoting to the enemy's use, is a proper subject of confiscation."

**§ 1239. Every Species of Intercourse With Enemy Illegal.** Every species of intercourse with the enemy is illegal. The prohibition is not limited to mere commercial intercourse. Johnson, J., in *The Rapid* (1814), 8 Cranch 155, 162, 163, 3 L. ed. 520: "Whether this was a trading in the eye of the prize law such as will subject the property to capture. The force of the argument on this point depends upon the terms made use of. If by trading in prize law was meant that signification of the term which consists in negotiation or contract, this case would certainly not come under the penalties of the rule. But the object, policy and spirit of the rule is to cut off all communication or actual locomotive intercourse between individuals of the belligerent states. Negotiation or contract has therefore no necessary connection with the offense. Intercourse inconsistent with actual *hostility* is the offense against which the operation of the rule is directed, and by substituting this definition for that of trading with an enemy an answer is given to this argument."

And see especially Story, J., in *The Julia* (1814), 8 Cranch 181, 193, 194, 195, 3 L. ed. 528: "Nor is there any difference between direct intercourse between the enemy countries and an intercourse through the medium of a neutral port. The latter is as strictly prohibited as the former."

See also Story, J., in *The Julia* (1813), 1 Gall. 594, 602, 603: "\* \* \* It would seem a necessary result of a state of war to suspend all negotiations and intercourse between the subjects of the belligerent nations. By the war every subject is placed in hostility to the adverse party. He is bound by every effort of his own to assist his own government and to

counteract the measures of its enemy. Every aid, therefore, by personal communication or by other intercourse which shall take off the pressure of the war or foster the resources or increase the comforts of the public enemy, is strictly inhibited. No contract is considered as valid between enemies, at least so far as to give them a remedy in the courts of either government, and they have, in the language of the civil law, no ability to sustain a *persona standi in judicio*. The ground upon which a trading with the enemy is prohibited is not the criminal intentions of the parties engaged in it or in the direct and immediate injury to the state. The principle is extracted for a more enlarged policy, which looks to the general interests of the nation, which may be sacrificed under the temptation of unlimited intercourse or sold by the cupidity of corrupted avarice."

See also *The St. Lawrence* (1814), 8 Cranch 434, 3 L. ed. 615; *The Alexander* (1814), 8 Cranch 169, 3 L. ed. 524; *The Rugen* (1816), 1 Wheat. 62, 4 L. ed. 437; *United States v. Barber* (1815), 9 Cranch 243, 3 L. ed. 719; *United States v. Sheldon* (1817), 2 Wheat. 119, 4 L. ed. 199.

/'*In Griswold v. Waddington*, 16 Johns. 459, 460, Kent, C. J., said: 'The law had put the sting of disability into every kind of voluntary communication and contract with an enemy which is made without the special permission of the government. There is wisdom and policy, patriotism and safety in this principle, and every relaxation of it tends to corrupt the allegiance of the subject and to prolong the calamities of war.'"

*The William Bagaley* (1866), 5 Wall. 377, 405, 407, 18 L. ed. 583: "Public war duly declared or recognized as such by the lawmaking power imports a prohibition by the sovereign to the subjects or citizens of all commercial intercourse and correspondence with citizens or persons domiciled in the enemy country."

Story, J., in *The Liverpool Packet* (1813), 1 Gall. 512, 521, 522: "I look back upon that decision (*The Julia*) without regret, and after much subsequent reflection can not doubt that it has a perfect foundation in the principles of public law. To the many authorities there stated I might have added the

pointed language of Sir W. Scott, in the *Jonge Pieter* (4 Rob. 79), that 'without the license of the government no communication, direct or indirect, can be carried on with the enemy,' and the rule strongly illustrative of the principle, which is acknowledged as early as the year books and has received sanction down to the present times, that every contract and engagement made with the enemy pending war is utterly void."

The *Lord Wellington* (1814), 2 Gall. 102.

The case of *United States v. Barker* (1820, Circ. Ct. of N. Y.), 1 Paine 156, constitutes a departure from the general rule.

The rigid rule was reaffirmed in *Scholefield v. Eichelberger* (1883), 7 Pet. 586, 593, 8 L. ed. 586: "The doctrine is not at this day to be questioned; that during a state of hostility the citizens of the hostile states are incapable of contracting with each other. For near twenty years this has been acknowledged as the settled doctrine of this court, and in a case which proves it to be a rule of very general and rigid application (*The Rapid*).

\* \* \* The question has never yet been examined whether a contract for necessities, or even for money to enable the individual to get home, would not be enforced, and analogies familiar to the law as well as the influence of the general rule in international law, that the severities of war are to be diminished by all safe and practical means, might be appealed to in support of such an exception. But at present it may be safely affirmed that there is no recognized exception but permission of a state to its own citizen, which is also implied in any treaty stipulation to that effect entered into by the belligerents."

In *Jecker v. Montgomery* (1855), 18 How. 110, 112, 119, 15 L. ed. 311: "The consequence of this state of hostility is that all intercourse and communication between them is unlawful. \* \* \*

We have seen, by the authorities cited, that intercourse with the enemy is sufficient cause for personal punishment and for the confiscation of property; that it is a cause originating in and inflexibly enforced by necessity for guarding the public safety."



**§ 1240. Enemy Property Liable to Forfeiture.** Property engaged in illegal intercourse with the enemy is deemed enemy property and is liable to forfeiture. *The Sally* (1814), 8 Cranch 382, 384, 3 L. ed. 597: "By the general law of prize, property engaged in an illegal intercourse with the enemy is deemed enemy property. It is of no consequence whether it belong to an ally or to a citizen; the illegal traffic stamps it with the hostile character, and attaches to it all the penal consequences of enemy ownership."

*The Rapid* (1814), 8 Cranch 155, 162, 163, 3 L. ed. 520: "The law of prize is part of the law of nations. In it a hostile character is attached to trade, independently of the character of the trader who pursues or directs it. Condemnation to the use of the captor is equally the fate of the property of the belligerent and of the property found engaged in antineutral trade. But a citizen or ally may be engaged in a hostile trade and thereby involve his property in the fate of those in whose cause he embarks.

"This liability of the property of a citizen to condemnation as prize of war may be likewise accounted for under other considerations. Everything that issues from a hostile country is, *prima facie*, the property of the enemy, and it is incumbent upon the claimant to support the negative of the proposition. But if the claimant be a citizen or an ally at the same time that he makes out his interest, he confesses the commission of an offense which, under a well-known rule of the civil law, deprives him of his right to prosecute his claim. \* \* \*

"Whether, on the breaking out of war, the citizen has a right to remove to his own country with his property is a question which we conceive does not arise in this case. This claimant certainly has not a right to leave the United States for the purpose of bringing home his property from an enemy country; much less could he claim it as a right to bring into this country goods the importation of which was expressly prohibited,"

See also *The Diana* (1814), 2 Gall. 93, 97; *Jecker v. Montgomery* (1855), 18 How. 110, 114, 15 L. ed. 311; *The Adula* (1899), 176 U. S. 361, 379, 44 L. ed. 505, and cases cited.

*The Benito Estenger* (1900), 176 U. S. 568, 571, 44 L. ed. 592: "By the law of prize, property engaged in any illegal intercourse with the enemy is deemed enemy property, whether belonging to an ally or a citizen, as the illegal traffic stamps it with the hostile character and attaches to it all the penal consequences."

See also *The Carlos F. Roses* (1900), 177 U. S. 655, 44 L. ed. 929.

Betts, J., in *The Crenshaw* (1861), *Blatchford's Prize Cases* 27: "Not only is property taken trading with the enemy liable to forfeiture, but it is subject to forfeiture as a prize of war."

Nelson, J., in *Charge to Grand Jury* (1861), 5 *Blatchf.* 549; *Fed. Cases No. 18271*: "Trade with the enemy \* \* \* according to the law of nations is forbidden and the property engaged in it is liable to forfeiture."

Betts, J., in *The Shark* (1862), *Blatchford's Prize Cases* 218.

**§ 1241. Persons Doing Business With Enemies Deemed Enemies.** All persons doing business with the enemy, whether citizens of the United States or citizens of the other belligerent nation or neutrals, are as to their property to be deemed enemies.

*Prize Cases* (1862), 2 Black, 674: "But in defining the meaning of the term 'enemies' property,' we will be led into error if we refer to *Fleta* and Lord Coke for their definition of the word 'enemy.' It is a technical phrase peculiar to prize courts, and depends upon principles of public policy as distinguished from the common law.

"Whether property be liable to capture as 'enemies' property' does not in any manner depend on the personal allegiance of the owner. 'It is the illegal traffic that stamps it "as enemies' property.'" It is of no consequence whether it belongs to an ally or a citizen: *The Sally*, 8 Cranch 382, 384, 3 L. ed. 597. The owner, *pro hac vice*, is an enemy: *The Case of the Tulip* (1812), 3 Wash. C. C. R. 183.

“The produce of the soil of the hostile territory, as well as other property engaged in the commerce of the hostile power, as the source of its wealth and strength, are always regarded as legitimate prize, without regard to the domicile of the owner, and much more so if he reside and trade within their territory.”

The Flying Scud (1867), 6 Wall. 263, 266, 18 L. ed. 755: “Although they are Mexican citizens, yet being established in business in the enemies’ country, must be regarded according to settled principles of prize law, as enemies, and their cotton as enemies’ property.”

See *Juragua Iron Co. v. United States* (1909), 212 U. S. 297, 305, 306, 53 L. ed. 520: “Cuba, being a part of Spain, was enemy’s country, and all persons, whatever their nationality, who resided there were, pending such war, to be deemed enemies of the United States and of all its people. The plaintiff, though an American corporation doing business in Cuba, was, during the war with Spain, to be deemed an enemy to the United States with respect to its property found and then used in that country, and such property could be regarded as enemy’s property, liable to be seized and confiscated by the United States in the progress of the war then being prosecuted.”

So in *Young v. United States* (1877), 97 U. S. 39, 60, 24 L. ed. 992: “All property within enemy territory is in law enemy property just as all persons in the same territory are enemies.”

*30 Hogsheads of Sugar v. Boyle* (1815), 9 Cranch 191, 3 L. ed. 701.

The *Sarah Star* (1861), Blatchford’s Prize Cases 74, 76: “\* \* \* Loyal citizens or neutrals who \* \* \* have a mercantile domicile in an enemy country are regarded in the prize courts in their commercial dealings and transactions there as enemies in relation to vessels and cargoes owned by them and captured at sea. \* \* \* The American authorities are equally explicit that a neutral, even enjoying the privilege of consul, domiciled and trading in a belligerent country, is, in war, deemed a belligerent, and his acts are clothed with the character of one of its subjects; and he can neither hold title

to property acquired in such country during war nor confer it upon others, against the interests imparted, by capture at sea, to adversary belligerents."

The *Mary Clinton* (1863), *Blatchford's Prize Cases* 560.

See also *The Venus* (1814), 8 Cranch 253, 3 L. ed. 553; *The Frances* (1814), 8 Cranch 348; *The Frances* (1814), 8 Cranch 351, 3 L. ed. 585; *Livingston v. Maryland Ins. Co.* (1813), 7 Cranch 506, 542, 3 L. ed. 421; *United States v. Guillem* (1850), 11 How. 50, 13 L. ed. 599; *The William Bagaley* (1866), 5 Wall. 377, 18 L. ed. 583; *Miller v. United States* (1870), 11 Wall. 268, 20 L. ed. 135.

§ 1242. **Contracts With Enemy After War Started.** The *William Bagaley* (1866), 5 Wall. 377, 405, 407, 18 L. ed. 583: "Public war duly declared or recognized as such by the lawmaking power, imports a prohibition by the sovereign to the subjects or citizens of all commercial intercourse and correspondence with citizens or persons domiciled in the enemy country."

*Hanger v. Abbott* (1867), 6 Wall. 532, 535, 18 L. ed. 939: "War, when duly declared or recognized as such by the warmaking power, imports a prohibition to the subjects, or citizens, of all commercial intercourse and correspondence with citizens or persons domiciled in the enemy country. Upon this principle of public law it is the established rule in all commercial nations that trading with the enemy, except under a government license, subjects the property to confiscation, or to capture and condemnation.

"Partnership with a foreigner is dissolved by the same event which makes him an alien enemy. \* \* \* Direct consequence of the rule as established in those cases is, that as soon as war is commenced, all trading, negotiation, communication and intercourse between the citizens of one of the belligerents with those of the other without the permission of the government, is unlawful. No valid contract, therefore, can be made, nor can any promise arise by implication of law from any transaction with an enemy. Exceptions to the rule are not admitted; and even after the war has terminated the defendant, in an action founded upon a contract made in violation of that

prohibition, may set up the legality of the transaction as a defense. Various attempts, says Mr. Wheaton, have been made to evade the operation of the rule, and to escape its penalties, but they have all been defeated by its inflexible rigor."

Coppell v. Hall (1868), 7 Wall. 542, 554, 557, 558, 19 L. ed 244: "When international wars exist all commerce between the countries of the belligerents, unless permitted, is contrary to public policy and all contracts growing out of such commerce are illegal. Such wars are regarded not as wars of the governments only, but of all the inhabitants of their respective countries. The sovereign may license trade, but in so far as it is done it is a suspension of war and a return to the condition of peace. It is said there can not be, at the same time, war for arms and peace for commerce. The sanction of the sovereign is indispensable for trade. A state of war ipso facto forbids it. The government only can relax the rigor of the rule. \* \* \*

"The payment of money by a subject of one of the belligerents, in the country of another, is condemned, and all contracts and securities looking to that end are illegal and void. \* \* \*

"In Griswold v. Waddington, 16 Johns. 459, 460, Kent, C. J., said: 'The law had put the sting of disability into every kind of voluntary communication and contract with an enemy which is made without the special permission of the government. There is wisdom and policy, patriotism and safety in this principle, and every relaxation of it tends to corrupt the allegiance of the subject and to prolong the calamities of war.' "

Miller v. United States (1870), 11 Wall. 268, 305, 306, 20 L. ed. 135: "It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts to appropriate the property. In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy's country, no matter what his nationality. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which, by depriving an enemy of property within reach of his

power, whether within his territory or without it, impairs his ability to resist the confiscating government, while at the same time it furnishes to that government means for carrying on the war. Hence any property which the enemy can use, either by actual appropriation or by the exercise of control over its owner, or which the adherents of the enemy have the power of devoting to the enemy's use, is a proper subject of confiscation."

**§ 1243. Contracts With Neutral Agent of Enemy Void.**

United States v. Lapene (1873), 17 Wall. 601, 602, 21 L. ed. 693: "All commercial contracts with the subjects or in the territory of the enemy, whether made directly by one in person or indirectly through an agent who is neutral, are illegal and void \* \* \*. No property passes and no rights are acquired under such contracts."

And see also Mrs. Alexander's Cotton (1864), 2 Wall. 404, 17 L. ed. 915; The Ouachita Cotton (1867), 6 Wall. 521, 18 L. ed. 935; United States v. Lane (1868), 8 Wall. 185, 195, 19 L. ed. 445; Dean v. Nelson (1869), 10 Wall. 158, 19 L. ed. 926; Lasere v. Rochereau (1873), 17 Wall. 437, 21 L. ed. 694; Day v. Micou (1873), 18 Wall. 156, 21 L. ed. 860; Mitchell v. United States (1874), 21 Wall. 350, 22 L. ed. 584; Fretz v. Stover (1874), 22 Wall. 198, 22 L. ed. 769; Mathews v. McStea (1870), 91 U. S. 7, 9, 10, 23 L. ed. 188; Desmare v. United States (1876), 93 U. S. 605, 612, 23 L. ed. 959; Pike v. Wassell (1876), 94 U. S. 711, 24 L. ed. 307; Conrad v. Waples (1877), 96 U. S. 279, 286, 24 L. ed. 721; Burbank v. Conrad (1877), 96 U. S. 291, 24 L. ed. 731; United States v. Pacific R. R. (1887), 120 U. S. 227, 233, 30 L. ed. 634; Briggs v. United States (1892), 143 U. S. 346, 353, 36 L. ed. 180; Nelson, J., dissenting in Prize Cases (1862), 2 Black, 635, 687.

See also Kershaw v. Kelsey (1868), 100 Mass. 561, 672; Trotter on Contract During War; Page on War and Alien Enemies.

**§ 1244. Contracts Previously Entered into With Enemy.**

Effect of war on contracts previously entered into with the enemy.

Hanger v. Abbott (1867), 6 Wall. 532, 536, 18 L. ed. 939: "Executory contracts also with an alien enemy, or even with a neutral, if they can not be performed except in the way of commercial intercourse with the enemy, are dissolved by the declaration of war, which operates for that purpose with a force equivalent to an act of congress.

"In former times the right to confiscate debts was admitted as an acknowledged doctrine of the law of nations, and in strictness it may still be said to exist, but it may well be considered as a naked and impolitic right, condemned by the enlightened conscience and judgment of modern times. Better opinion is that executed contracts, such as the debt in this case, although existing prior to the war, are not annulled or extinguished, but the remedy is only suspended, which is a necessary conclusion, on account of the inability of an alien enemy to sue or to sustain, in the language of the civilians, a *persona standi in judicio*."

What contracts are merely suspended and what are terminated by a state of war is considered in *New York Ins. Co. v. Statham* (1876), 93 U. S. 24, 31, 32, 33, 35, 23 L. ed. 789: "The case, therefore, is one in which time is material and of the essence of the contract. \* \* \* But the court below bases its decision on the assumption that, when performance of the condition becomes illegal in consequence of the prevalence of public war, it is excused, and forfeiture does not ensue. It supposes the contract to have been suspended during the war, and to have revived with all its force when the war ended. Such a suspension and revival do take place in the case of ordinary debts. But have they ever been known to take place in the case of executory contracts in which time is material? \* \* \*

"The truth is that the doctrine of the revival of contracts suspended during the war is one based on considerations of equity and justice, and can not be invoked to revive a contract which it would be unjust or inequitable to revive.

"In the case of life insurance, besides the materiality of time in the performance of the contract, another strong reason

exists why the policy should not be revived. The parties do not stand on equal ground in reference to such a revival. It would operate most unjustly against the company. \* \* \*

“We are of opinion, therefore, that an action can not be maintained for the amount assured on a policy of life insurance forfeited, like those in question, by nonpayment of the premium, even though the payment was prevented by the existence of the war. \* \* \*

“\* \* \* Failure being caused by a public war, without the fault of the assured, they are entitled *ex aequo et bono* to recover the equitable value of the policies with interest from the close of the war.”

The *William Bagaley* (1866), 5 Wall. 377, 407, 18 L. ed. 583: “\* \* \* Executory contracts with an alien enemy, or even with a neutral, if they can not be performed except in the way of commercial intercourse with the enemy, are *ipso facto* dissolved by the declaration of war, which operates to that end and for that purpose with a force equivalent to that of an act of congress.”

See also *Gates v. Goodloe* (1879), 101 U. S. 612, 619, 621, 25 L. ed. 895; *Lamar v. Micou* (1884), 112 U. S. 452, 464, 28 L. ed. 751; *United States v. Dietrich* (1908), 126 Fed. 671, 674.

See also *Griswold v. Waddington* (1819), 10 Johns. 438; *Abell v. Insurance Co.* (1881), 18 W. Va. 406, 438; *Moore's International Law Digest*, vol. 10, p. 244.

**§ 1245. Powers of Attorney With Enemy After War Started.** *United States v. Lapene* (1873), 17 Wall. 601, 602, 21 L. ed. 693: “All commercial contracts with the subjects or in the territory of the enemy, whether made directly by one in person or indirectly through an agent who is neutral, are illegal and void \* \* \*. No property passes and no rights are acquired under such contracts.”

And see also *Mrs. Alexander's Cotton* (1864), 2 Wall. 404, 17 L. ed. 915; *The Ouachita Cotton* (1867), 6 Wall. 521, 18 L. ed. 935; *United States v. Lane* (1868), 8 Wall. 185, 195, 19 L. ed. 445; *Dean v. Nelson* (1869), 10 Wall. 158, 19 L. ed. 926; *Lasere*



v. Rochereau (1873), 17 Wall. 437, 21 L. ed. 694; Day v. Micou (1873), 18 Wall. 156, 21 L. ed. 860; Mitchell v. United States (1874), 21 Wall. 350, 22 L. ed. 584; Fretz v. Stover (1874), 22 Wall. 198, 22 L. ed. 769; Mathews v. McStea (1870), 91 U. S. 7, 9, 10, 23 L. ed. 188; Desmare v. United States (1876), 93 U. S. 605, 612, 23 L. ed. 959; Pike v. Wassell (1876), 94 U. S. 711, 24 L. ed. 307; Conrad v. Waples (1877), 96 U. S. 279, 286, 24 L. ed. 721; Burbank v. Conrad (1877), 96 U. S. 291, 24 L. ed. 731; United States v. Pacific R. R. (1887), 120 U. S. 227, 233, 30 L. ed. 634; Briggs v. United States (1892), 143 U. S. 346, 353, 36 L. ed. 180; Nelson, J., dissenting in Prize Cases (1862), 2 Black 635, 687.

See also Kershaw v. Kelsey (1868), 100 Mass. 561, 672; Trotter on Contract During War; Page on War and Alien Enemies.

**§ 1246. Powers of Attorney With Enemy Before War Started.** As to the effect of war on payments to agents of the enemy, and upon appointment of agents, and upon acts performed under power of attorney granted by the enemy prior to war. Connecticut v. Pennsylvania (1818, C. C. Pa.), 1 Pet. Cir. Ct. Rep. 496, 527, 528; United States v. Grossmayer (1869), 9 Wall. 72, 73, 19 L. ed. 627; Ward v. Smith (1868), 7 Wall. 447, 19 L. ed. 207; University v. Finch (1873), 18 Wall. 106, 21 L. ed. 818; Insurance Co. v. Davis (1877), 95 U. S. 425, 429, 24 L. ed. 453; Williams v. Paine (1897), 169 U. S. 55, 70, 71, 42 L. ed. 658.

**§ 1247. Partnerships With Enemy Dissolved by War.** Hanger v. Abbott (1867), 6 Wall. 532, 535, 18 L. ed. 939: "War, when duly declared or recognized as such by the warmaking power, imports a prohibition to the subjects or citizens of all commercial intercourse and correspondence with citizens or persons domiciled in the enemy country. Upon this principle of public law it is the established rule in all commercial nations that trading with the enemy, except under a government license, subjects the property to confiscation or to capture and condemnation.

"Partnership with a foreigner is dissolved by the same event which makes him an alien enemy. \* \* \* Direct consequence

of the rule as established in those cases is that as soon as war is commenced all trading, negotiation, communication and intercourse between the citizens of one of the belligerents with those of the other without the permission of the government, is unlawful. No valid contract, therefore, can be made, nor can any promise arise by implication of law, from any transaction with an enemy. Exceptions to the rule are not admitted; and even after the war has terminated the defendant, in an action founded upon a contract made in violation of that prohibition, may set up the illegality of the transaction as a defense. Various attempts, says Mr. Wheaton, have been made to evade the operation of the rule and to escape its penalties, but they have all been defeated by its inflexible rigor."

**§ 1248. Payments to Enemy Illegal and Void.** In general, payments to the enemy (except to agents in the United States appointed prior to the war and confirmed since the war) are illegal and void; all rights of an enemy to sue in the courts are suspended.

The *William Bagaley* (1866), 5 Wall. 377, 405, 407, 18 L. ed. 583: "Public war duly declared or recognized as such by the lawmaking power, imports a prohibition by the sovereign to the subjects or citizens of all commercial intercourse and correspondence with citizens or persons domiciled in the enemy country."

*Hanger v. Abbott* (1867), 6 Wall. 532, 535, 18 L. ed. 939: "War, when duly declared or recognized as such by the lawmaking power, imports a prohibition to the subjects or citizens of all commercial intercourse and correspondence with citizens or persons domiciled in the enemy country. Upon this principle of public law it is the established rule in all commercial nations that trading with the enemy, except under a government license, subjects the property to confiscation, or to capture and condemnation.

"Partnership with a foreigner is dissolved by the same event which makes him an alien enemy. \* \* \* Direct consequence of the rule as established in those cases is, that as soon as war is commenced, all trading, negotiation, communication and

intercourse between the citizens of one of the belligerents with those of the other without the permission of the government, is unlawful. No valid contract, therefore, can be made, nor can any promise arise by implication of law from any transaction with an enemy. Exceptions to the rule are not admitted; and even after the war has terminated the defendant, in an action founded upon a contract made in violation of that prohibition, may set up the illegality of the transaction as a defense. Various attempts, says Mr. Wheaton, have been made to evade the operation of the rule, and to escape its penalties, but they have all been defeated by its inflexible rigor."

Coppell v. Hall (1868), 7 Wall. 542, 554, 557, 558, 19 L. ed. 244: "When international wars exist, all commerce between the countries of the belligerents, unless permitted, is contrary to public policy, and all contracts growing out of such commerce are illegal. Such wars are regarded not as wars of the governments only, but of all the inhabitants of their respective countries. The sovereign may license trade, but in so far as it is done it is a suspension of war and a return to the condition of peace. It is said there can not be, at the same time, war for arms and peace for commerce. The sanction of the sovereign is indispensable for trade. A state of war ipso facto forbids it. The government only can relax the rigor of the rule. \* \* \*

"The payment of money by a subject of one of the belligerents, in the country of another, is condemned, and all contracts and securities looking to that end are illegal and void. \* \* \*

"In *Griswold v. Waddington*, 16 Johns. 459, 460, Kent, C. J., said: 'The law had put the sting of disability into every kind of voluntary communication and contract with an enemy which is made without the special permission of the government. There is wisdom and policy, patriotism and safety in this principle, and every relaxation of it tends to corrupt the allegiance of the subject and to prolong the calamities of war.' "

*Miller v. United States* (1870), 11 Wall. 268, 305, 306, 20 L. ed. 135: "It is immaterial to it whether the owner be an alien or a friend, or even a citizen or subject of the power that attempts

to appropriate the property. In either case the property may be liable to confiscation under the rules of war. It is certainly enough to warrant the exercise of this belligerent right that the owner be a resident of the enemy's country, no matter what his nationality. The whole doctrine of confiscation is built upon the foundation that it is an instrument of coercion, which, by depriving an enemy of property within reach of his power, whether within his territory or without it, impairs his ability to resist the confiscating government, while at the same time it furnishes to that government means for carrying on the war. Hence any property which the enemy can use, either by actual appropriation or by the exercise of control over its owner, or which the adherents of the enemy have the power of devoting to the enemy's use, is a proper subject of confiscation."

United States v. Lapene (1873), 17 Wall. 601, 602, 21 L. ed. 693: "All commercial contracts with the subjects or in the territory of the enemy, whether made directly by one in person or indirectly through an agent who is neutral, are illegal and void \* \* \*. No property passes and no rights are acquired under such contracts."

And see also Mrs. Alexander's Cotton (1864), 2 Wall. 404, 17 L. ed. 915; The Ouachita Cotton (1876), 6 Wall. 521, 18 L. ed. 935; United States v. Lane (1868), 8 Wall. 185, 195, 19 L. ed. 445; Dean v. Nelson (1869), 10 Wall. 158, 19 L. ed. 926; Lasere v. Rochereau (1873), 17 Wall. 437, 21 L. ed. 694; Day v. Micou (1873), 18 Wall. 156, 21 L. ed. 860; Mitchell v. United States (1874), 21 Wall. 350, 22 L. ed. 584; Fretz v. Stover (1874), 22 Wall. 198, 22 L. ed. 769; Mathews v. McStea (1870), 91 U. S. 7, 9, 10, 23 L. ed. 188; Desmare v. United States (1876), 93 U. S. 605, 612, 23 L. ed. 959; Pike v. Wassell (1876), 94 U. S. 711, 24 L. ed. 307; Conrad v. Waples (1877), 96 U. S. 279, 286, 24 L. ed. 721; Burbank v. Conrad (1877), 96 U. S. 291, 24 L. ed. 731; United States v. Pacific R. R. (1887), 120 U. S. 227, 233, 30 L. ed. 634; Briggs v. United States (1892), 134 U. S. 346, 353, 36 L. ed. 180; Nelson, J., dissenting in Prize Cases (1862), 2 Black 635, 687.

See also *Kershaw v. Kelsey* (1868), 100 Mass. 561, 672; *Trotter on Contract During War*; *Page on War and Alien Enemies*.

**§ 1249. Payments of Interest Affected by War.** As to the effect of war on payment of interest: see *Trotter on Contract During War* (supplement), p. 61; *Trotter on Contract During War*, p. 49.

See also *Brown v. Hiatts* (1872), 15 Wall. 177, 185, 21 L. ed. 128; *Hoare v. Allen* (1789), 2 Dall. 102, 1 L. ed. 307; *Foxcroft v. Nagle* (1791), 2 Dall. 182; *Connecticut v. Pennsylvania* (1818), 1 Pet. (Cir. Ct. Rep.) 496, 524; *Ward v. Smith* (1868), 7 Wall. 447, 452, 19 L. ed. 207; *Moore, Dig. Int. Law*, vol. 7, p. 252.

See also statement in 22 Cyc. 1562, and 30 American and English Ency. Law (2d ed.), p. 8. (The statements contained in these last two references do not seem to be in entire accord with the Supreme Court decisions.)

**§ 1250. Rights of Enemy to Sue Suspended.** As to the power to sue in the courts, see *Hanger v. Abbott* (1867), 6 Wall. 532, 536, 542, 18 L. ed. 939; *Caperton v. Bowyer* (1871), 14 Wall. 216, 236, 20 L. ed. 882; *Masterson v. Howard* (1873), 18 Wall. 99, 105, 21 L. ed. 764.

An alien enemy may be sued in the courts of the United States, though he has no right to sue: *McVeigh v. United States* (1870), 11 Wall. 259, 20 L. ed. 80; *University v. Finch* (1873), 18 Wall. 106, 111, 21 L. ed. 818.

**§ 1251. Power of Government to License Trade With Enemy.** As to the power of the Government to license trade with the enemy, see especially *United States v. Lane* (1868), 8 Wall. 185, 195, 19 L. ed. 445; *Hamilton v. Dillin* (1874), 21 Wall. 73, 97, 22 L. ed. 528: “\* \* \* The power of the government to impose such conditions upon commercial intercourse with an enemy in time of war as it sees fit is undoubted. It is a power which every other government in the world claims and exercises and which belongs to the government of the United

States as incident to the power to declare war and to carry it to a successful termination.”

Coppell v. Hall (1868), 7 Wall. 542, 554, 557, 558, 19 L. ed. 244: “When international wars exist all commerce between the countries of the belligerents, unless permitted, is contrary to public policy, and all contracts growing out of such commerce are illegal. Such wars are regarded not as wars of the governments only, but of all the inhabitants of their respective countries. The sovereign may license trade, but in so far as it is done it is a suspension of war and a return to the condition of peace. It is said there can not be, at the same time, war for arms and peace for commerce. The sanction of the sovereign is indispensable for trade. A state of war ipso facto forbids it. The government only can relax the rigor of the rule. \* \* \*

“The payment of money by a subject of one of the belligerents, in the country of another, is condemned, and all contracts and securities looking to that end are illegal and void. \* \* \*

**§ 1252. Statute of Limitations Affected by War.** As to effect of war on statutes of limitation, see *Stewart v. Kahn* (1870), 11 Wall. 493, 20 L. ed. 176; *United States v. Wiley* (1870), 11 Wall. 508, 20 L. ed. 211; *The Protector* (1869), 9 Wall. 687, 19 L. ed. 812; *Hanger v. Abbott* (1867), 6 Wall. 532, 18 L. ed. 939.

**§ 1253. Rights of Alien Enemies Resident in United States.** As to the rights of alien enemies resident in the United States, see *Clarke v. Morey* (1813), 10 Johns. 69; *Seymour v. Bailey* (1872), 66 Ill. 288; *Princess v. Moffett* (1914), W. N. 379 (1915), 1 Ch. D. 58 (English); *Volkl v. Governors* (1914), 2 Irish R. 542; *Forrestier v. Bordman* (1839), 1 Story 43; *Hallet v. Jenks* (1805), 3 Cranch 210, 2 L. ed. 414; *Brown v. United States* (1814), 8 Cranch 110, 3 L. ed. 504; *Case of Fries* (1799), 9 Fed. Cases No. 5126, pp. 830-832; *Lockington v. Smith* (1819), 1 Pet. (Cir. Ct. Rep.) 466, 472; *In re Lockington*, Brightly, N. P. (Pa.) 269; Revised Statutes, secs. 4067-4070; President's Proclamation of April 6, 1917, as to alien enemies.

**TRADING WITH THE ENEMY—ENGLISH DECISIONS DURING  
WORLD WAR<sup>3</sup>**

**§ 1254. English Corporations Controlled by German Stockholders.** *Amorduct Manufacturing Co. v. Debries & Co.*, 84 L. J. K. B. 586, 112 L. T. 131, 39 T. L. R. 69, 59 S. J. 91; *Rubber Co. v. Daimler Co.*, C. A. (1915), 1 K. B. 893, 84 L. J. K. B. 926, 20 Com. Cas. 209 (1915), W. N. 44, 59 S. J. 232; *Daimler Co. v. The Continental Tyre & Rubber Co.*, H. L. (E) (1916), 2 A. C. 307, 85 L. J. K. B. 1333, 114 L. T. 1049 (1916), W. N. 269, 22 Com. Cas. 32, 32 T. L. R. 624, 60 S. J. 602; *In re Hilches, Ex parte Muhesa Rubber Plantations (Ltd.)*, C. A. (1917), 1 K. B. 48, 86 L. J. K. B. 204 (1916), H. B. R. 160, 115 L. T. 490, 33 T. L. R. 28. See also *Societe Anonyme Belge des Mines d'Aljustrel v. Anglo-Belgian Agency* (July 30, 1915), 31 T. L. R. 624.

**§ 1255. What Constitutes Trading With the Enemy.** *Moss v. Donohoe*, J. C. 32 T. L. R. 343: It is trading with the enemy to order from an American company with a branch in Rotterdam gin which the defendant knew was sent by such branch to Hamburg, Germany, for bottling.

*The Panariellos*, 85 L. J. (P.) 112, 114 L. T. 670, 32 T. L. R. 459, 60 S. J. 427: A British subject dispatched goods after the outbreak of war and with knowledge of it from a foreign port for delivery as directed by an enemy firm and for their benefit. Held, that this constituted trading with the enemy and the goods were forfeit.

*Stephen M. Weld & Co. v. Fruhling Goshen*, (1916) W. N. 187; 32 T. L. R. 469: The plaintiffs were partners in a German firm and a draft for a part of the profits of the German firm was drawn and accepted before war began by the defendants. The draft was paid over to the plaintiffs, an American firm,

<sup>3</sup> The English decisions presented herewith are taken from a collection of English judicial authorities collected by Hon. Charles Warren, As-

sistant Attorney General, and published as Appendix C of Senate Report No. 113, 65th Congress, 1st Session.

after war was declared and the defendants refused payment. Judgment for the defendants, it being a transfer on behalf of an enemy.

In *re* Aramayo Francke Mines (Ltd.), C. A. (1917) 1 Ch. 451, *see* L. J. (Ch.) 225, 116 L. T. 54, (1917) W. N. 36, 33 T. L. R. 176: When a corporation incorporated in England and doing business in Bolivia for the benefit of the allies attempts, in order to avoid taxes, to transfer the assets to a corporation incorporated in Switzerland, the court held that an order should be made appointing a controller under the trading with the enemy act to prohibit that action.

**§ 1256. What Constitutes Trading for Benefit of Enemy.** *Rex v. Kupfer* (1915), 2 K. B. 321: Kupfer, in England, made payments to an English bank to be transmitted to a Dutch house to which it was proved Kupfer had been indebted before the war. Held, this was a payment for the benefit of the enemy.

**§ 1257. Trading With Branches of Enemy Concerns.** *Wolf v. Carr, Parker & Co.* (April 29, 1915), 31 T. L. R. 407.

**§ 1258. Contracts of Insurance.** *W. L. Ingle v. Mannheim Insurance Co.* (1915), 1 K. B. 227, 84 L. J. K. B. 491, 112 L. T. 510: A suit may be maintained against a branch of an alien enemy insurance company situated in England on a policy issued before the war. The loss occurred subsequently and a claim to recover such a loss is not a "transaction with the enemy."

**§ 1259. Custodian of Enemy Property Under English Act.** Appointment of a custodian and distribution of the assets and details of administration under the peculiar provisions of the English trading with the enemy act.

*Stevenson & Sons (Ltd.) v. Aktiengesellschaft*, C. A. 115 L. T. 594, 33 T. L. R. 84; C. A. (1917) 1 K. B. 842, 32 T. L. R.



84, 61 S. J. 146: The plaintiffs, an English company, were, at the outbreak of the war between England and Germany, sole agents in England for the defendants, a German company. There was also a partnership relation between the two. Held, that both agency and partnership were terminated at the outbreak of the war, and that the determination as to what should be done with that portion of the plaintiff's assets which should belong to the German partners was one for Parliament to determine.

On appeal, held, that lower court was right in regard to the agency and partnership and that the enemy partner was entitled to a share of the profits made after the dissolution by the English corporation carrying on the business with the aid of the enemy partners' capital. *In re Kastner & Co., Auto-Piano Co. v. Kastner & Co.* (1917), 1 Ch. 390, 86 L. J. (Ch.) 235, 116 L. T. 62, (1917) W. N. 15, 33 T. L. R. 149; *Schmidt v. Van der Veen & Co.*, 84 L. J. K. B. 861, 112 L. T. 991, 31 T. L. R. 214; *In re W. Hagelberg Aktiengesellschaft* (1916), 2 Ch. 503, (1916) W. N. 335; *In re Fried Krupp Aktien-Gesellschaft* (1916), 2 Ch. 194, 114 L. T. 1026, (1916) W. N. 234, 32 T. L. R. 553, (1917) W. N. 171.

**§ 1260. Right of Custodian to Vote Shares.** *In re R. Pharaon et Fils*, C. A. (1916) 1 Ch. 1, 85 L. J. (Ch.) 68, (1915) H. B. R. 232, 113 L. T. 1138, (1915) W. N. 340, 32 T. L. R. 47: A custodian in whom are vested shares in an English company, formerly belonging to an enemy, may vote the shares as if he was himself the stockholder.

**§ 1261. Right of Alien Enemy to Vote Shares.** *Robson v. Premier Oil & Pipe Line Co.*, C. A. (1915) 2 Ch. 124, 84 L. J. (Ch.) 629, 118 L. T. 523: During a state of war an alien enemy may not vote shares held in English company, but right of voting is suspended until after war.

**§ 1262. Right of Alien Enemy to Sue and Be Sued.** *Mercedes Daimler Motor Co. v. Maudsley Motor Co.*, 32 R. P. C.

149; (1915) W. N. 54, 31 T. L. R. 178: Two companies sued as coplaintiffs for patent infringement. Agreement between them provided British company had sole right to sue for infringement and could join alien enemy as coplaintiff on certain notice. Held, will of the alien enemy not relevant, and British 220, 112 L. T. 114.

*Princess Thurn & Taxis v. Moffett* (1915), 1 Ch. 58, 84 L. J. (Ch.) 220, 112 L. T. 114.

An alien enemy's wife residing and duly registered in England may sue upon her individual rights: *Halsey et al. v. Lowenfeld*, (1915) W. N. 400; 32 T. L. R. 1.

Held, that an action might be brought against an alien enemy on a lease for rent occurring after commencement of war: *Vokl v. Governors* (1914), 2 L. R. 543; *Porter v. Freudenberg et al.*, C. A. (1915) 1 K. B. 857, 84 L. J. K. B. 1001, 20 Com. Cas. 189.

Alien enemy can not sue unless within the realm by license of the king. He may be sued in the king's courts: *J. B. Rombach Baden Clock Co. v. Gent & Son*, 84 L. J. K. B. 1558, 31 T. L. R. 942.

On dissolution of a partnership in England between a naturalized British subject and alien enemies, the former being appointed receiver, it was held the latter could sue for partnership debts which defendants could not withhold as payments to the enemy: *Ex parte Boussmacher* (1806), 13 Ves. 71, and *Mercedes Daimler Motor Co. v. Maudsley Motor Co.* (1915), 31 T. L. R., followed.

**§ 1263. Stay of Suit Due to Outbreak of War.** *Robinson & Co. v. Mannheim Continental Insurance Co.* (1915), 1 K. B. 155, 84 L. J. K. B. 238, 20 Com. Cas. 125; *In re Mary, Duchess of Sutherland, et al. v. Burna et al.*, C. A. 31 L. T. R. 394: Commencement of war does not give right to have action stayed when brought before by British plaintiffs against a German insurance company.

**§ 1264. Internment of Alien Enemy Plaintiff.** *Schaffenius v. Goldberg*, C. A. (1915) W. N. 386, 32 L. T. R. 133: Internment of alien enemy plaintiff did not affect his right to prosecute an action brought by him as registered alien before internment.

**§ 1265. Right of Appeal.** *Porter v. Freudenberg* (C. A. (1915), 1 J. B. 857, 84 L. J. K. B. 1001, 20 Com. Cas. 189; *Orenstein & Koppel v. Egyptian Phosphate Co.*, Ct. Sess. (Sc.). 1915 S. C. 55, A. A. F. in *Berlin Chem. Works v. Levinstein*, C. A. 84 L. J. (Ch.) 842, 32 R. P. C. 140, 112 L. T. R. 963: Alien enemy plaintiff in action commenced before war has no right of appeal which is stayed until conclusion of peace.

*Welsbach Light Co. of Australasia (Ltd.) v. Commonwealth of Australia and Attorney General of Australia*, J. C. 33 T. L. R. 332: The attorney general of Australia, acting under the trading with the enemy act, made a declaration that the petitioners were carried on for the benefit of enemies and succeeded in bringing the business to a standstill. They brought action against him denying his allegation and alleging that his act was ultra vires. A demurrer was sustained and the appeal to His Majesty in council denied.

**§ 1266. Executory Contracts Become Invalid on Breaking Out of War.** *Arnold Karberg & Co. v. Blythe, Green, Jourdan & Co.*, C. A. 60 S. J. 156; *Duncan Fox & Co. v. Schrempft & Co.*, C. A. (1915) 3 K. B. 355, 84 L. J. K. B. 2206, 20 Com. Cas. 337, 113 L. T. 600; *Grey (Edward) & Co. v. Tolme & Runge*, 31 T. L. R. 551; *In re Shipton, Anderson & Co.*, Div. Ct. (1915), 3 K. B. 676, 84 L. J. K. B. 2137, (1915) W. N. 304, 31 T. L. R. 598; *Stevenson v. Aktien Gesellschaft* (1916), 1 K. B. 763. *Distington Hematite Iron Co. v. Possehl & Co.* (1916), 1 K. B. 811, 85 L. J. K. B. 919, (1916) W. N. 117, 32 T. L. R. 349: A contract between an English company and a German firm provided that the German firm was to take a

certain quantity of pig iron yearly, but upon failure to do so would incur no liability other than the loss of control of the output. The vendor agreed that the purchaser should be considered as its sole agent. It was held that as this contract involved a continuing effort on both sides, it was dissolved, and not merely suspended, on the outbreak of war.

*Zinc Corporation Ltd. v. Hirsh*, C. A. (1916) 1 K. B. 541, 85 L. J. K. B. 565, 21 Com. Cas. 273, 114 L. T. 222, (1916) W. N. 11, 32 T. L. R. 232: The plaintiffs, an English company, made a continuing contract to sell to a German company the entire production of zinc concentrates from their mine in Australia. The contract contained a prohibition against the plaintiffs selling to anyone else, and further enumerated various causes which were stipulated as reasons for a failure to deliver the concentrates. War was not specified as a cause of suspension. It was held that if war was construed as a cause of suspension of delivery, it would result in a construction of the contract as still existing, with the result that the prohibition upon the plaintiffs against selling to any but the German purchaser would be operative, and that therefore it was for the public good to consider the cancellation of the contract as having occurred from the outbreak of the war.

§ 1267. **Agency.** *Tingley v. Muller*, C. A. (1917) W. N. 180, 116 L. T. 482, 33 T. L. R. 369, 61 S. J. 478: A contract for the sale of land was entered into between an English purchaser and a German resident in England and a deposit paid. The vendor left for Germany, becoming an alien enemy, but left a power of attorney in an English solicitor to complete the sale. Held, that the power of attorney was not revoked by the vendor becoming an alien enemy.

*Maxwell v. Grunhert*, C. A. 31, T. L. R. 79: An agent in England of an alien enemy principal is not entitled to bring an action for a decree that he is entitled to called debts and for appointment of a receiver.

§ 1268. **What Are Goods, Wares and Merchandise.** *King v. Oppenheimer* (1915), 2 K. B. 755: Held, that certain transfers made from lithograph stones in Germany were goods, wares and merchandise.

§ 1269. **Enemy Property.** *In re Bankfur Handel & Co.* (1915), 1 Ch. 848, 84 L. J. (Ch.) 435, 113 L. T. 228: A debtor to an alien enemy is not a person who holds or manages for or on behalf of an enemy any property.

§ 1270. **Contracts of Allied Subjects.** *Kreglinger & Co. v. Cohen & Co.*, 21 T. L. R. 592; *Wolf & Sons v. Carr et al.*, C. A. (1915) W. N. 195, 31 T. L. R. 407: Held, that plaintiffs, allied subjects could not sue for breach of contract made before the war with persons who became alien enemies at outbreak of war and repudiated such contracts as same became illegal at outbreak of war.

#### UNITED STATES TRADING WITH THE ENEMY ACT

§ 1271. **History and Comment on United States Trading With the Enemy Act.**<sup>4</sup> (a) **Purpose of the Act.** Said Joseph P. Randall, chairman of the Senate subcommittee of the Committee on Commerce, presenting the subcommittee's report on the Trading With the Enemy Act as reported by that subcommittee: "The purpose of this bill is to mitigate the rules of law which prohibit all intercourse between the citizens of warring nations, and to permit, under careful safeguards and restrictions, certain kinds of business to be carried on. It also provides for the care and administration of the property and property rights of enemies and their allies in this country pending the war. The spirit of the act is to permit such business intercourse as may be beneficial to citizens of this country, under rules and regulations of the President, which will prevent our enemies and their allies from receiving any benefits there-

<sup>4</sup> See Senate Report No. 113, 65th Congress, 1st Session.

from until after the war closes, leaving to the courts and to future action of Congress the adjustment of rights and claims arising from such transactions. Under the old rule warring nations did not respect the property rights of their enemies, but a more enlightened opinion prevails at the present time, and it is now thought to be entirely proper to use the property of enemies without confiscating it; also to allow such business as fire insurance, issuance and use of patents, etc., to be carried on with our enemies and their allies, provided that none of the profits arising therefrom shall be sent out of this country until the war ends."

(b) **General Scope and Effect.** England declared war on Germany August 4, 1914, and on September 18, 1914, the English Parliament passed "An Act to make provision with respect to penalties for trading with the enemy and other purposes connected therewith."<sup>5</sup> The United States declared war on Germany April 6, 1917, and Congress, several months afterward, passed its Trading With the Enemy Act, which was approved October 6, 1917.<sup>6</sup> Naturally we should find some points of resemblance between the two acts, which points of resemblance may be worthy of notice.

It is interesting to note that the imperial German government on August 4, 1917, the same day England declared war on Germany, passed an act concurred in by the Bundesrath and the Reichstag and promulgated by the German emperor.<sup>7</sup> This imperial act empowered the Bundesrath to make administrative orders and regulations affecting enemy undertakings and businesses acting within Germany.

<sup>5</sup> 4 and 5 Geo. 5 cap. 87; English Statutes (1914), 401.

<sup>6</sup> Public No. 91, 65th Congress H. R. 4960; United States Compiled Statutes, sec. 3115¼a et seq. See Amendment found in Appropriations Act of March 28, 1918. [Public—No. 109—65th Congress. (H. R. 9867).]

<sup>7</sup> This imperial act and the Order of the Bundesrath are to be found

in the Reichs and Gesetz Gazette of 1914 et seq. Reference to these German acts and orders is found in "Trading with the Enemy—an article upon the measures adopted by Germany in retaliation for those promulgated by other nations," by Theo. H. Thiesing, 65th Congress, 1st Session, Senate Document No. 107.

The Bundesrath acting in accordance with such authority beginning September 4, 1914, passed from time to time orders or regulations providing for the inspection of enemy businesses, the administration of certain enemy undertakings by state authorities, the sequestration and the liquidation of enemy businesses. In addition to these orders an ordinance of July 1, 1915, authorized the imperial chancellor by special orders to decree in the public interest the impairment and abrogation of patent and trade-mark rights, and copyrights of persons belonging to the certain nations named in the ordinance.

France, on April 7, 1915, passed an act which may be called a Trading With the Enemy Act, providing for the interdictum of commercial relations between French subjects and those of an enemy power.<sup>8</sup>

Australia passed its first Trading With the Enemy Act October 23, 1914. This act contains provisions for the appointment of a controller of an enemy firm or company by the High Court, and the powers so conferred shall be those of a receiver and manager under the laws relating to bankruptcy or insolvency in force in the state, etc.<sup>9</sup>

Mr. Charles Warren, assistant attorney general of the United States, drafted the United States Trading With the Enemy Act as it was first submitted to Congress. The act, when finally it became a law, was materially changed from the original draft, besides containing the following additions:

<sup>8</sup> See English Law Times, April 17, 1915, v. 138:546.

<sup>9</sup> Acts of the Parliament of the Commonwealth of Australia—Trading with the Enemy Act of October 23, 1914. \* \* \* "the minister may apply to the high court for the appointment of a controller of the firm or company, and the high court shall have power to appoint such a controller for such time and with such powers and subject to such conditions as the court thinks fit, and the powers so conferred shall be those of a receiver and manager un-

der the laws relating to bankruptcy or insolvency in force in the state in which the firm or company carries on business with such modifications, restrictions and extensions as the court thinks fit, including if the court considers it necessary or expedient for the purpose of enabling the controller to borrow money, the power upon special application made to the court for that purpose to create charges on the property of the firm or company in priority to existing charges."

sec. 4 (a), applications by enemy insurance companies for licenses; sec. 5 (b), regulation of transactions in foreign exchange; sec. 4, permitting the President to prohibit importing inserted as a new section; sec. 14, second paragraph providing for a report to the President by collector of customs; sec. 15, appropriation was increased from \$250,000 in original bill to \$450,000; sec. 19, this section prohibiting editorials, etc., in foreign languages was inserted as a new section. In addition throughout the act the powers granted to the Secretary of Commerce were generally in the final act granted to the President of the United States.

The United States Trading With the Enemy Act as finally passed may be divided into eight general subjects as follows: 1. Definition of the word "enemy"; 2. Making unlawful trading with the enemy; 3. License to enemy insurance companies; 4. Conservation and utilization of enemy property; 5. Suspension of statute of limitations; 6. Patents in connection with the act; 7. Provisions against importing; 8. Provisions against foreign language editorials.

The Committee on Interstate and Foreign Commerce of the House of Representatives submitted the following report concerning the act:<sup>10</sup>

"The Committee on Interstate and Foreign Commerce, to whom was referred the bill (H. R. 4960) to define, regulate, and punish trading with the enemy, and for other purposes, having considered the same, report thereon with a recommendation that it pass.

"The chief objects of this bill are (1) to recognize and apply concretely, subject to definite modifications, the principle and practice of international law interdicting trade in time of war, and (2) to conserve and utilize upon a basis of practical justice enemy property found within the jurisdiction of the United States.

<sup>10</sup> House Report No. 85 Congress, 1st Session. Also printed in Senate Report No. 113, 65th Congress, 1st Session.



## I

“According to American law one of the immediate consequences of war is to put an end to all commercial relations between citizens or subjects of belligerent nations. Existing dealings must be abruptly discontinued, and no new dealings must be entertained or undertaken. In short, commercial intercourse can not be lawfully carried on between citizens of nations at war, except under the express sanction of the Government. This seems clearly the accepted Anglo-American doctrine.

“In 1799 Sir William Scott, in the leading case of *The Hoop*, 1 Rob. 196, held that “There exists such a general rule of maritime jurisprudence in this country (Great Britain) by which all trading with the enemy, unless with permission of the sovereign, is interdicted.”

This is still the view of Great Britain, as evidenced by a number of cases arising since the beginning of the present world-wide war: *Hugh Stevenson & Sons (Ltd.) v. Aktien-Gesellschaft* (1916), 1 K. B. 763; *Distington Hematite Iron Co. (Ltd.) v. Possehl* (1916), 1 K. B. 811; and other decisions too numerous to cite.

“Perhaps the leading American cases are *The Rapid*, 8 Cranch 155, decided in 1814, and *Insurance Co. v. Davis*, 95 U. S. 425, decided in 1877. In the former case an American citizen was forbidden to bring home property which he had purchased in England before the War of 1812, and had deposited on a small British island located near the line between Nova Scotia and the United States; and in the latter case, after reviewing many American decisions, the Supreme Court comprehensively declared:

“That war suspends all commercial intercourse between the citizens of two belligerent countries or states, except so far as may be allowed by the sovereign authority, has been so often asserted and explained in this court within the last fifteen years, that any further discussion of that proposition would be

out of place. As a consequence of this fundamental proposition it must follow that no active business can be maintained, either personally or by correspondence or through an agent, by the citizens of one belligerent with the citizens of the other.'

"This view of the law, held by England and America, is in the main shared by continental Europe. See Woolsey, sec. 123; Wheaton, sec. 309; Hall (6th ed.), 383-385; Kershaw v. Kelsey (1868), 100 Mass., 561, and other authorities. In sum, war and commerce can not in the nature of things coexist between belligerents. Citizens can not be permitted directly or indirectly to augment the material resources of the enemy by commercial intercourse, and the necessity for this interdiction is more obvious today than at any period of the world's history. Never were the industrial, commercial, and financial resources of belligerent nations so vital to the success of war as now. It is not extravagant to affirm that the effective organization of these resources are more likely to determine the result of the present conflict than armies and navies. Therefore, everything reasonably possible should be done to prevent our enemy from reaping the advantages of commercial transactions with the people of the United States. To summarize: the purpose of the bill is not to create new international rules or practices, but to define and mitigate them.

"First. The first modification is found in the definition of the word "enemy" (sec. 2, subsec. (a), p. 1), whereby the enemy with whom or with trade which is interdicted is not so much determined by the nationality or allegiance of the individual, association, or corporation as by his or its commercial domicile or residence in enemy territory. The enemy domiciled or residing in the United States is not included in the direct operation of the act itself, but may be reached by subsequent proclamation of the President, as authorized by the act. One leading purpose of the bill is to prevent the least practicable restriction upon trade carried on in the United States, and therefore lawabiding persons, whether Germans or neutrals, residing

within the United States, are not affected by the direct operation of the act, unless the conduct of such persons is of a character so hostile that they should be brought within the terms of the act by the proclamation of the President.

“Second. The trade or commerce regulated or prohibited is defined in subsections (a), (b), (c), (d), and (e), page 4. This trade covers almost every imaginable transaction, and is forbidden and made unlawful except when allowed under the form of licenses issued by the Secretary of Commerce (p. 4, sec. 3, line 18). This authorization of trading under licenses constitutes the principal modification of the rule of international law forbidding trade between the citizens of belligerents, for the power to grant such licenses, and therefore exemption from the operation of the law, is given by the bill. It should also be added that the prohibitions and limitations applicable to the enemy are in the main also applicable to an ally of the enemy.

“Third. The forbidden intercourse or commerce extends to the transportation of an enemy or ally of an enemy, and also to the transmission, or attempted transmission, out of the United States of any letter, document, writing, message, picture, diagram, map, device, or other form of communication addressed to an enemy or the ally of an enemy. The necessity of this particular prohibition is too obvious to require explanation.

## II

“First. In the order found in the bill the power of the government to deal with enemy property is next reached (p. 7, sec. 6). It is manifest that the United States should as far as practicable conserve and utilize enemy property found within its jurisdiction. To this end such property must be brought under the control of the government, to be impounded or used, and to await such disposition at the close of the war as Congress may determine. Therefore, enemy property is required by its owner or its agents to be disclosed, and paid over, conveyed, transferred, or delivered to an agent of

the government known as the "alien property custodian," who is to be appointed by the Secretary of Commerce, with the approval of the President, and at a salary not exceeding \$5,000. The custodian is empowered to receive all money and property in the United States due or belonging to an enemy, or an ally of the enemy, and to hold, administer, and account for the same in accordance with the terms of the act, or under the general direction of the Secretary of Commerce. The Secretary of Commerce is also empowered to employ and fix the compensation of all necessary clerks, investigators, accountants, and employes, who, however, are required to be selected from a list of eligibles obtained in accordance with the civil service law.

"Second. The act next contains rather comprehensive provisions for the disclosure of enemy property, and for the conveyance or transfer thereof to the custodian, and the Secretary of Commerce is authorized to make all regulations necessary to effectuate such conveyance or transfer. (Sec. 7, subsecs. (a), (b), (c), p. 8.) But should no payment, conveyance, or transfer be required by the Secretary of Commerce of a person (who is not an enemy or ally of an enemy) owing money to, or holding property for, an enemy or an ally of an enemy, such person may of his own option pay, convey, or transfer to the custodian such debt or property. (Subsec. (c), p. 9.) Likewise such person holding a mortgage, pledge, or lien may, upon default therein, dispose of the same in accordance with prescribed regulations, thereby having his rights as fully protected as if the procedure had taken place directly and personally with the enemy or alien enemy. Sec. 8, pp. 9, 10.) Similarly, certain contracts between persons or corporations with an enemy or ally of an enemy may be as effectually terminated by notice served upon the custodian as if served personally upon the enemy or ally of an enemy. (Second paragraph, p. 10.)

"Third. Again, innocent claimants of property, rights, and titles held by the custodian may litigate against the custodian

as effectually as against the enemy or ally of an enemy. (Sec. 9, pp. 10, 11.) Thus the preservation and protection of property and property rights are afforded innocent claimants notwithstanding the enforced absence of enemy parties in interest.

“Moreover, the preservation of enemy property by governmental agencies is to the best interest of the enemy subject himself. The fortune of trade in time of war renders precarious the solvency of debtors or holders of property, and the assumption of the debt or custody of property by the government gives the enemy, or ally of an enemy, the best possible protection.

“Fourth. But the preservation and protection of property is not alone provided for; its proper utilization may be a public necessity. Therefore, moneys (including checks and drafts payable on demand) held by the custodian must be immediately deposited by him with the Treasurer of the United States, and may in turn be invested and reinvested by the Secretary of the Treasury in the bonds or certificates of the United States, under appropriate rules and regulations. Consequently, enemy property may be utilized to support and promote the success of the war against the enemy government. Manifestly it is not wise to permit such property to remain idle in the coffers of the government; therefore, its investment and reinvestment is not only sound business policy, but a just method of auxiliary warfare, for it is thought that this method of utilizing the moneys and property of the enemy will yield a considerable income, and at the same time prevent the enemy from obtaining the benefits of credits based upon such property. (Sec. 11, p. 17.)

### III

“First. The act, unaided by the proclamation of the President, excepts largely from inhibition of the general law as well as from the act itself, patents and trade-marks. The enemy

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or ally of an enemy is permitted to obtain in the United States letters patent and registration of trade-marks under the provisions of existing law. But if the war imposes an inability upon the enemy applicant to secure letters patent either during the war or within six months thereafter an extension of nine additional months is made within which letters patent or registration of trade-marks may be perfected, provided, however, that the nation of the enemy applicant shall extend substantially similar privileges to citizens and corporations of the United States, but that the application for the exercise of this privilege by our citizens shall first be approved by the Secretary of Commerce. (Sec. 10, subsecs. (a), (b), p. 12.)

“Second. The act, however, goes further: Any citizen or corporation of the United States may obtain a license from the Federal Trade Commission to exercise the rights covered by any patent owned by an enemy or alien enemy. The license may be exclusive or nonexclusive, as the commission deems for the public welfare, the applicant’s ability and good faith to exercise the privileges of the license being established. The Federal Trade Commission is fully authorized to prescribe the regulations (but not the fee which is fixed by the act) under which the license may be obtained and the conditions under which it may be operated. (Sec. 10, subsec. (c), p. 13.)

“Third. The licensee shall file annually with the Federal Trade Commission, or oftener if the commission so prescribes, a full statement of the extent of the use and enjoyment of the patent rights acquired under the license, and shall pay to the custodian, or such other officer as the President may direct, five per cent. upon the gross sales of such invention, or five per cent. of the value of the use of such inventions to the licensee, as may be determined by the Federal Trade Commission, and the sums so paid shall be covered into the Treasury as a trust fund for such licensee or patentee, and paid therefrom as provided. (Sec. 10, subsec. (d), pp. 14, 15.)

“Fourth. The enemy patentee may within a year after the end of the war file a bill in equity against the licensee in the

United States District Court for the district in which the licensee resides, or, if a corporation, in which it has its principal place of business, for the recovery from the licensee for all use and enjoyment of the patented invention. The Treasurer of the United States is to be a party to this suit, as is also the alien property custodian, upon whom notice shall be filed within thirty days after the entry of the suit. The amount recovered under the decree, when final, shall be paid on order of the court to the patentee from the five per cent. fund deposited by the licensee, or so far as such deposit will satisfy the decree, and should there be any balance of said deposit, same shall be repaid to the licensee. If no suit is brought within one year after the end of the war, or no notice is filed as required, then the licensee shall make no further deposits, and all funds theretofore deposited by him shall be repaid to him.

“Fifth. If suit is brought as above provided, the court may at any time terminate the license, and restrain the licensee from infringement thereafter, or in case the licensee, prior to the suit, shall have made investment of capital based on the license, may continue the license upon such terms and upon such royalties as the court may determine to be just and reasonable. (Sec. 10, subsec. (f), pp. 15, 16.)

“The enemy, or ally of an enemy, has no jurisdiction other than that conferred by this section of the act to maintain suits or actions within the United States, and all powers of attorney heretofore or hereafter granted by an enemy, or ally of an enemy, to any person within the United States, so far as such powers of attorney may be necessary for the performance of acts authorized in this section, shall be valid, otherwise declared void. (Subsec. (h), p. 17.)

#### IV

“First. Sections 12 and 13, pages 20 and 21, relate to the regulation of clearance of vessels bound for foreign ports, in order that there may be full control of both vessels and cargoes, domestic as well as foreign.

“Second. An appropriation of a sum not to exceed \$250,000 is contained in the act to be used in the discretion of the Secretary of Commerce for the administration of the provisions of the act during the fiscal year ending June 30, 1918, and for the payment of salaries of all persons employed under the act, together with the necessary expenses for transportation, subsistence, rentals in the District of Columbia, books, periodicals, stationery, miscellaneous supplies, printing, and other necessary expenses.

“Section 15, page 22, provides punishment and penalty for the violation of the act. And sec. 16, pages 22 and 23, confers jurisdiction upon the district courts of the United States to issue such process as may be necessary to enforce the provisions of the act, with the right of appeal as provided in secs. 128 and 238 of the Act of March 3, 1911, entitled “An act to codify, revise, and amend the laws relating to the judiciary.” Jurisdiction of offenses against the act committed in the Philippine Islands and the Canal Zone is given to the several courts of the first instance in the Philippine Islands and the district court of the Canal Zone, and concurrent jurisdiction for like offenses is conferred upon the district courts of the United States for offenses against the act committed upon the high seas.”

Mr. Charles Warren, who drafted the act as set forth above, appeared before the House and Senate committees which had charge of the bill, and among other things said concerning trading with the enemy and the proposed act as follows: \* \* \*

“Trade with the enemy is unlawful under the common law both in England and the United States. In England it has always been a common-law criminal offense (*Regina v. Castro* (1880), 5 Q. B. D. 490). In the United States, so far as such trade is criminal, it must be made so by federal legislation, there being no common law of crimes. Such trade has a civil aspect—being unlawful, the acts of all parties engaging in such trade are void, or their rights and remedies are suspended during



the war. It has also a federal fiscal aspect, in that the United States may cause to be forfeited in the courts all property concerned in the unlawful trade.

“The question of what constitutes trade with the enemy and what constitutes an enemy within the purview of the illegal trade are settled by the decisions of the English and of the American courts. These decisions constitute part of the common law of the two countries. Strictly speaking, they are not founded on international law. They are purely domestic decisions, founded on such view of public policy as the courts of each country decide to adopt, paying attention, however, to the general consensus of other countries as to what shall constitute a wise public policy in dealings affecting outside countries.

“It follows that when the legislature of a country enacts a statute relative to trade with the enemy containing provisions differing from the law laid down by the courts, it is not violating or departing from international law. It is simply expressing its views as to the need of change in the domestic law of the country. Each country must decide for itself what it shall regard as unlawful trade with the enemy, and also what persons it shall regard, for the purposes of such trade, as enemy.

“Changes in economic, commercial, financial, military, naval, and political conditions may make it highly necessary that doctrines as to trade with the enemy laid down by our courts a century ago should be modified by the legislature either by making them more stringent or less stringent, according to the needs and conditions of the present day. The complexity of modern business demands far greater stringency in certain directions than the old cases decided by the courts provided for. On the other hand, the more enlightened views of the present day as to treatment of enemies makes possible certain relaxations in the old law.

“In former days, trade consisted wholly in the actual transfer and transport of commodities. Today a form of trade even more helpful to the enemy consists of transfer of credits and

money by letter, cable, or wireless. Hence, while formerly the mere accumulation of enemy property or funds in this country did not assist the enemy materially, so long as it remained here, now with the ready ease by which credits may be transferred and funds used it becomes just as important to prevent an enemy from building up, using, or transferring his credit or credits as from actually transferring physical property. Hence much more rigid supervision or prevention of such transactions becomes necessary.

“So also, with the greater ease of intercommunication between countries, it may become necessary to expand the class of persons who, within the purview of unlawful trade with the enemy, shall be deemed “enemy.” Even under the old court decisions the term “enemy” (when used in connection with trade with the enemy) was not confined to citizens of the enemy nation; it applied under certain circumstances to neutrals and their business within the enemy country, and even to our own citizens when having business or property in the enemy country. For these reasons a modern trading with the enemy act must define the term “enemy” according to the particular conditions confronting each country so legislating, and likewise must on the same lines define the particular acts which it thinks necessary to forbid as unlawful trade. It was my intent in drafting this bill to make it as little restrictive of American commerce and as liberal toward the enemy private person as was compatible with the safety of the United States and with justice to American interests.

“For the general scope of the present bill (H. R. 4690), I refer to a memorandum in the printed hearings before the House committee, pages 24-25, and also to the testimony of Secretary Lansing, Secretary Redfield, and myself, *ibid.*, pages 3-16, 31-44. For previous American trade with the enemy statutes and proclamations, see printed hearings, pages 26, and *United States v. Lane* (1868), 8 Wall. 185.

“The present bill is less stringent, and designedly so, than the present English act. And it is less stringent than the law

of trade with the enemy as laid down by our courts, for it provides for a system of licenses by which any act or business forbidden by the bill may be licensed to be done, if the President shall be of opinion that it can be carried on or done with safety to the United States. The provisions of this bill greatly amplify and make more practical a system of license or permit which was provided for by the government during the Civil War. The bill may in some ways interfere with the freedom of American commerce, and it may bear hardly, in places, upon individuals. By this license system, however, we provide a method of relief in individual cases where the relief can be extended without injury to the interests of the country. But it is necessary always to bear in mind that a war can not be carried on without hurting somebody, even, at times, our own citizens. The public good, however, must prevail over private gain. As was said in *Bishop v. Jones* (28 Texas 294), there can not be "a war for arms and a peace for commerce."

"One of the most important features of the bill is that which provides for the temporary taking over of enemy property, its conservation in the hands of the alien property custodian, and its investment in United States bonds. The investment feature, so far as I know, is an entirely new provision, contained in no previous statute, and in line with modern, lenient policies with reference to private property in time of war. I call attention to Secretary Redfield's characterization of this part of the bill, in the House committee hearings. He said: "I do not know who was the originator of the idea, but whoever was has created something as fine in its way as the return of the Boxer indemnity, because the enemy property is all in our hands to bear its share of our expenses in fighting the enemy, and yet it is safeguarded so that if it be the will of Congress, under urgent conditions, it may be returned to him intact and safeguarded by us during the whole period of the war."

"The theory of the bill is that enemy property in this country shall not remain in the hands of the enemy's debtor or agent here; but that, if the President so directs, it shall be tempo-

rarily conscripted by the government to finance the government through investment in its bonds, and to be paid back to the enemy or otherwise disposed of at the end of the war as Congress shall direct. In other words, we fight the enemy with his own property during the war; but we do not permanently confiscate it. Moreover, this temporary conscription of enemy property is also conservation of enemy property; for it is taken from the hands of debtors or agents, as to whose solvency the enemy would otherwise have to assume the risks, and invested in the safest security in the world—United States bonds—or deposited in government depositaries.”

**(c) Enforcement of the Act.** Since the object of the act is to prevent trading with the enemy, we find various provisions in the act designed to forcibly prohibit such trading.<sup>11</sup> In the first place, such trading as carefully defined is unlawful. Furthermore, sec. 16 provides for a fine of \$10,000 and imprisonment and confiscation for the violation of any of the provisions of the act, or of any license, rule or regulation issued thereunder.

Section 17 gives the district courts of the United States jurisdiction to make and enter all such rules as to notice and otherwise, and all such rules and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this act.

Section 18 gives the several courts of first instance in the Philippine Islands and the district court of the Canal Zone jurisdiction of offenses under the act.

In addition, we have the provisional remedy, namely, the appointment of an alien enemy custodian, which we comment on under the next subheading.

**(d) Provisional Remedies of the Act.** Since courts in ordinary litigation frequently have to employ provisional remedies such as injunctions, attachments, receiverships and the like to

<sup>11</sup> United States Trading with the Enemy Act, 40 U. S. Stat. at L. 411, sec. 3 (a), (b), (c), (d).

protect property and sometimes preserve or realize the property for litigants, it is natural that the government, when it passes a law directly and drastically affecting the property in the United States of alien enemies, should find it necessary to provide provisional remedies in the act itself to enable the government to enforce the act.

The English Trading With the Enemy Act of 1914 and the amendment acts following it provide four drastic methods of finding out whether an offense of trading with the enemy has been committed and for preventing the continuance, namely: 1. The appointment of an inspector to inspect all books, documents, etc., belonging to or under the control of the alleged enemy,<sup>12</sup> with a further provision against destroying or mutilating or falsifying books or documents.<sup>13</sup> 2. A controller may be appointed under the English act who can watch and control a suspected business.<sup>14</sup> 3. The controller appointed may under proper authority wind up the business. 4. A custodian of alien property may be appointed who acts largely as a trustee or receiver of such property.<sup>15</sup>

The United States Trading With the Enemy Act does not provide directly for any inspector or controller of alleged enemy property or business, neither does it provide specifically for the winding up of an alleged enemy business, but it does provide for the appointment by the President of an alien property custodian.

In addition to the appointment of an alien enemy custodian to take charge of the property of aliens, the United States Trading With the Enemy Act authorizes the President to make such rules not inconsistent with law as may be necessary to carry out the provisions of this act;<sup>16</sup> and the President may

<sup>12</sup> English Trading with the Enemy Act (1914), 2 (1), (4 and 5 Geo. 5).

<sup>13</sup> Trading with the Enemy and the Export of Prohibited Goods Act, (1916) (6 and 7 Geo. 5 cap. 52).

<sup>14</sup> Trading with Enemy Act (1914). (3, 4 and 5 Geo. 5 cap. 87).

<sup>15</sup> English Trading with the Enemy Amendment Act (1914), 5(2).

<sup>16</sup> United States Trading with the Enemy Act, 40 U. S. Stat. at L. 411, sec. 5a.

exercise any power or authority conferred by this act through such officer or officers as he shall direct.<sup>17</sup>

Acting under this authority, the President did, on October 12, 1917, issue his executive order and by sec. XII of that order did authorize the Secretary of the Treasury to grant licenses or withhold the same to enemy or "ally of enemy" insurance or reinsurance companies doing business within the United States, and by sec. XIII of that same executive order the President did authorize and direct the Secretary of the Treasury, for the purpose of such executive administration, to take such measures, adopt such administrative procedure and use such agency or agencies as he may from time to time deem necessary and proper for that purpose.

Acting under the authority vested in him, the Secretary of the Treasury did, on November 25, 1917, issue a decision prohibiting all enemy and ally of enemy insurance companies, except those dealing in life insurance, from doing further business in the United States. The text of the decision is as follows:

"By virtue of the authority vested in me by the President under the Trading With the Enemy Act, to grant or withhold licenses to enemy or ally of enemy insurance companies, a hearing was called of the various parties interested, including the state superintendents of insurance. The hearing was largely attended, and after full discussion briefs were filed.

"Upon careful weighing of the evidence submitted, I have reached the conclusion that the safety of the United States requires that enemy and ally of enemy marine, fire and casualty insurance companies shall not be allowed to do business as going concerns. The consideration of safety is so important as to render it unnecessary to determine at this time whether this action is also demanded by other considerations incident to the successful prosecution of the war.

"In these circumstances I am convinced that the best interests of the country will be served by the liquidation of these

<sup>17</sup> United States Trading with the Enemy Act, 40 U. S. Stat. at L. 411, sec. 5a.

companies under the direction of their American management and subject to such regulations as the Secretary of the Treasury may from time to time prescribe.

“As the liquidation of the life insurance companies involved may work an injustice to policyholders, and as the information accessible to such companies can not benefit the enemy, because of the character of the business and its inconsiderable proportions, these companies for the present will be allowed to continue existing contracts.”

(e) **Alien Property Custodian.** The United States Trading With the Enemy Act provides for the appointment by the President of an alien property custodian who shall be empowered to receive all money and property in the United States due or belonging to an enemy or ally of enemy which may be paid, conveyed, transferred, assigned or delivered to said custodian under the provisions of this act.<sup>18</sup>

Section 12, among other things, provides that, “The alien property custodian shall be vested with all the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this act, and acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof, or make any disposition thereof, or of any part thereof by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, of and when necessary to prevent waste and protect such property, and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto or to the proceeds thereof, may be preserved and safeguarded.”<sup>18a</sup>

Acting under this authority to make rules and regulations, the President did, on October 12, 1917, make an executive order vesting power and authority in designated officers and

<sup>18</sup> United States Trading with the Enemy Act, sec. 6.

<sup>18a</sup> See Amendment found in Ap-

propriation Act of March 28, 1918. [Public—No. 109—65th Congress (H. R. 9867).]

making rules and regulations under Trading With the Enemy Act and Title VII of the act approved June 15, 1917, being the so-called Espionage Act. This executive order is printed in the official bulletin published in Washington Wednesday, October 17, 1917. Secs. XXIX<sup>18b</sup> et seq. of the executive order relate to the alien property custodian, and vest in such custodian some of the powers vested in the President by the Trading With the Enemy Act. By sec. XXXIII of the executive order the alien property custodian is authorized to take all such measures as may be necessary or expedient and not inconsistent with law, to administer the powers herein conferred, and he shall have further the power and authority to make such rules and regulations not inconsistent with law as may be necessary and proper to carry out the provisions of sec. 7 (a), sec. 7 (c), sec. 7 (d), sec. 8 (a) and sec. 8 (b), conferred upon the President by the provisions thereof and by the provisions of sec. 5 (a), said rules and regulations to be duly approved by the attorney-general.

The President did, on October 30, 1917, bestow upon A. Mitchell Palmer the powers of alien property custodian. The first property of any great magnitude taken over by the alien property custodian was the Hamburg-American Line Building at 45 Broadway, New York City, seized November 8, 1917. A. Mitchell Palmer authorized Julius Henry Cohen, Secretary of the War Board for the Port of New York, to receive on behalf of the alien property custodian all rights of possession of the Hamburg-American Line as owner, tenant, lessee, or otherwise, in the building at 45 Broadway, New York City; also furniture, equipment, fixtures of said lines; also all other property located on the premises.

The Secretary of the War Board for the Port of New York called upon the United States marshal who, with sixty assistants, went to the executive offices of the Hamburg-American Line and demanded the surrender of the building.

**(f) Rights and Duties of Debtors to Enemies Under Act.**

Any person in the United States who holds property belonging

<sup>18b</sup> See Further Executive Order published in Official Bulletin, Washington, D. C., April 4, 1918.  
of President of April 2, 1918, pub-



to an alien or owes money to an alien shall report the fact to the alien property custodian.<sup>19</sup>

Such property or money shall, if the President shall so require, be conveyed, transferred, assigned, delivered or paid over to the alien property custodian.<sup>20</sup> Under the President's executive order of October 12, 1917, this power primarily vested in the President has been delegated to the alien property custodian.<sup>21</sup>

The debtor to an enemy, if he is not required by the President or the President's representative to convey, transfer, etc., to the alien property custodian as is provided for in sec. 7 (c) of the act may, at his option, with the consent of the President<sup>22</sup> or the alien property custodian,<sup>23</sup> pay, convey, transfer, assign or deliver to the alien property custodian said money or other property.

Subsection (e) of sec. 7 of the act provides that "No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule or regulation made by the President under authority of this act," and payment to the alien property custodian under the provisions of sec. 7 shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of the same.

**(g) Rights and Duties of Creditors of Enemies Under Act.** The English Trading With the Enemy Amendment Act provides for an application by a creditor of an alien enemy to the alien custodian for payment to such claimant part or all of the property of such alien or of damages out of the property of the alien.<sup>24</sup>

<sup>19</sup> United States Trading with the Enemy Act, sec. 7.

<sup>20</sup> United States Trading with the Enemy Act, sec. 7 (c).

<sup>21</sup> See executive order of President Wilson dated October 12, 1917; sec. XXIX. Published in Official Bulletin, Washington, October 17, 1917,

also Order of April 2, 1918, Official Bulletin of April 4, 1918.

<sup>22</sup> United States Trading with the Enemy Act, sec. 7 (d).

<sup>23</sup> Executive President's Order of October 17, 1917, sec. XXX.

<sup>24</sup> English Trading with the Enemy Amendment Act (1914), 5 Geo. 5 cap. 12-4.

Such creditors of the alien enemy occupy a secondary position under the English act.<sup>25</sup>

Section 9 of the United States Trading With the Enemy Act provides how any person not an enemy may present his claim against property which is in the hands of the alien property custodian. After such application is properly made the President, with the assent of the owner of such property and of all persons claiming any right, title or interest therein, may order the payment, etc. But such order shall not bar a suit against the claimant.

If the President upon application shall not make such order as above referred to, within sixty days, and if the claimant shall have properly presented his claim to the alien property custodian, then the claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity, all of which is more particularly provided for in said sec. 9.

Unless the President shall make such order as is provided for in sec. 9 of the act, or the court shall make an order as is provided for in secs. 9 and 10 of the act, then claims of any enemy or an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury shall be settled after the end of the war as Congress shall direct.<sup>26</sup>

In reading over sec. 9 of the act as finally passed, we may wonder why it was necessary to place in the act a provision for the handing over of property to a claimant without compelling the claimant to assert his claim through a court of law, particularly when such payment can only be made "with the assent of the owner of said property and of all persons claiming any right, title or interest therein," and in addition when "no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the

<sup>25</sup> Fried-Krupp Aktien Gesellschaft, In re (1916), 2 Ch. 194, at 198.

<sup>26</sup> United States Trading with the Enemy Act, sec. 11.

claimant to establish any right, title or interest which he may have in such money or other property.”

A full discussion and explanation of this part of sec. 9 was made by Assistant Attorney General Warren before the United States Subcommittee of the Committee on Commerce on July 28, 1917.<sup>27</sup> This discussion covered the bill as giving large administrative and executive powers in the Secretary of Commerce. The bill as finally drafted generally and throughout gives these administrative and executory powers to the President instead of to the Secretary of Commerce.

We report Assistant Attorney General Warren's remarks and cross-examination by Senator Vardaman as follows:

“By sec. 9 as originally drafted we provided a method by which, after any property had been taken over by direction of the President, any American citizen who might have any claim to that property or any right in that property was given a means by which his claim could be asserted and established. Of course, it would not be fair to take over the money into the Treasury of the United States without providing for some possibility that there might be adverse claims of American citizens which should be protected, and in the most general language we made a provision protecting claims of United States citizens.

“We provided that any person—that includes corporations and partnerships—not an enemy or ally of enemy, claiming any interest or right of title in any money or property which might have been conveyed, etc., to the alien property custodian, might file claim under oath with the alien property custodian and might bring suit in any district court of the United States at any time up to the time of the expiration of six months after the war. That is, we made a general clause in as general language as we could make it so as to cover any particle of claim that any United States citizen might have to this money.

<sup>27</sup> Hearings before the Subcommittee on Commerce, United States Senate, 65th Congress, 1st Session, on H. R. 4960, at page 148 et seq.

“Congressman Mann’s amendment took three separate, individual cases and said, “In these cases there shall be a right to assert a claim against these funds,” and the three specific cases were these:

“One, the case where an American citizen was resident in Germany at the time the funds were taken over, and therefore was an enemy at the time—that is, an enemy for the purposes of this act at the time—when the property was taken over, but where he afterwards removed out of Germany; and under those circumstances the Mann amendment gave him a right to sue; but he would have a right to sue anyway, under the bill as originally drafted, because the moment he moved out of Germany he became a United States citizen and came within the general provisions of sec. 9.

“The second case was where the property was taken over under a mistaken apprehension that the man who owned it was an enemy, and where it should turn out afterwards he was not in fact an enemy. The Mann amendment gives him in that case a right to sue; but he had a right to sue, anyway, because under the general clause of sec. 9 any person not an enemy could sue, and one of the elements of the suit would have to be the establishment of the fact that he was not an enemy; and if that were a fact he could establish it and sue.

“The third case covered by the Mann amendment was the case where the property was taken over by the alien property custodian—enemy property—and afterwards the enemy died and an American citizen inherited a part of the whole of that property. Of course the moment that the American citizen inherited part of the enemy property in the hands of the alien property custodian, he thereupon acquired a claim, right, title, or interest, and could sue anyway under the bill as originally drafted. So that there, again, the amendment was entirely unnecessary.

“Senator Vardaman. It was just a repetition?

“Mr. Warren. Yes. Now, the only portion of the Mann amendment that contained something that was not in the original draft of the bill was this, and I am going to submit this

question to your committee, as to the wisdom of making the change. The Mann amendment provided not merely for the establishment of the American citizen's right of claim by suit, but provided that he might apply to the Secretary of Commerce for a return of the property—that is, property which was already in the Treasury of the United States or in the hands of the alien property custodian—and if the Secretary of Commerce did not grant the application for a return, he might sue.

“Now, we considered that in drafting the bill and, frankly, I was of the opinion that that power ought not to be given the Secretary of Commerce. In the first place, I felt pretty confident, as a practical matter, that there would be very few cases when the Secretary of Commerce would desire to take the responsibility of adjudicating the validity of the claim or the validity of the right, title, or interest claimed by the United States citizen; so that as a matter of practical administration I was of the belief that the Secretary of Commerce, in order to protect himself, would relegate anybody to a suit.

“Senator Vardaman. Where is that provision you are now discussing?

“Mr. Warren. The provision of the amendment of Congressman Mann?

“Senator Vardaman. Yes.

“Mr. Warren. That is contained in lines 24 and 25 of page 17 and lines 1 to 3 of page 18, as follows [reading]:

“‘The Secretary of Commerce may upon application by or on behalf of such person and proper showing of the facts, authorize and direct the return to him, in such manner as the Secretary shall determine, of any such property or any part or interest therein to which he may be so entitled. If the Secretary of Commerce does not grant such application within three months after the same is made, the person so entitled may institute a suit in equity.’

“The Chairman. Would he not be entitled to all of his rights in the court, even if we left this out?

“Mr. Warren. Yes, sir.

“The Chairman. There is no necessity to leave this clause in to preserve the rights of the citizen?”

“Mr. Warren. We gave him the right to go into the courts, and the Mann amendment gives him the right also to go to the Secretary of Commerce.

“Senator Vardaman. You will find this argument made in favor of that. We had something of that kind suggested the other day.

“Mr. Warren. Yes.

“Senator Vardaman. The argument will be made that a man who has property in the custody of the alien property custodian, if there is no contest over it, ought to be permitted to enjoy the use of his property without going to the expense of maintaining a suit; but I can understand how the Secretary of Commerce would prefer that this claim be established in a court of law; and if there were very many such cases it would take a great deal of the time of the Secretary of Commerce.

“Mr. Warren. As I say, we considered that in drafting the bill, and we intentionally omitted any provision of that kind. However, after listening the other day to the insurance people regarding their particular problems—the cases where they may have paid over and would want to get back their return premiums from any of these insurance companies if the Secretary of Commerce should close them up—I have prepared this very carefully guarded amendment. I do not know whether it goes as far as they desire, but it is a part of the amendment I submitted to Senator Frelinghuysen, and you will find it inserted in the redraft of the bill which I have submitted to you, on page 15. There is a slip pasted in there, and that would be an insert in the bill as originally drafted. I suggest striking out in line 10, page 15, after the word “require,” the other four words, and striking out lines 11 and 12 and inserting in their place the following [reading]:

‘and the Secretary of Commerce, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest

therein, order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the alien-property custodian or by the Treasurer of the United States, or of the interest therein to which the Secretary of Commerce shall determine said claimant is entitled: *Provided*, That no such order by the Secretary of Commerce shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the Secretary of Commerce shall not so order within sixty days after the filing of such application, or if the claimant shall have duly filed the statement or notice above required and shall have made no application to the Secretary of Commerce, said claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity, etc.'

"That is, I restrict that simply to the case where the owner of the property and every other person claiming any interest at that time assents, and provided that the Secretary of Commerce may return it. But even then I do not protect the claimant who gets his property back from being sued by anyone who thinks he still has a claim.

"Senator Vardaman. This amendment prevents the Secretary from doing that if there are claims filed and those claimants do not assent?

"Mr. Warren. Yes, supposing there may be one or two or three claims, or any number, in opposition to that action by the Secretary.

"Senator Vardaman. In that event it goes to the court?

"Mr. Warren. Yes; in that event it goes to the court.

"Senator Vardaman. I think that is a safeguard that ought to be made.

"Mr. Warren. I do not know whether that will satisfy the insurance companies or not, but it is as far as I, personally, believe that Congress ought to go.

"Senator Vardaman. What more could they ask for?

"Mr. Warren. They wanted a return from the Secretary of Commerce if he was satisfied with their evidence.

“The Chairman. That is making the Secretary of Commerce a court.

“Senator Vardaman. It is not only that, but it is denying to the people who have claims the right to go into a court of justice for the determination of their rights.

“The Chairman. We will agree with you on that proposition, I am sure. What is the next one?

“Mr. Warren. If that very restricted amendment goes in there at the point I have noted it on page 15, there are certain minor amendments that must follow that, in other sections. As the bill is now drawn there is no power given to the Treasurer of the United States or to the alien property custodian to pay out money that is in the Treasury or to return property that is in the hands of the alien property custodian, except upon order or decree of the court, and therefore there must be certain minor amendments to allow him—

“Senator Vardaman. To conform to this?

“Mr. Warren (continuing). To allow him to pay out and return the money upon the order of the Secretary of Commerce under these particular circumstances; and therefore these additional amendments will become necessary. They are already inserted. They are inserted in the draft you gentlemen have, but for the purposes of the record I will state them so that you may be able to follow the connection. I will just state it this way: If the amendment of lines 10, 11, and 12 on page 15 in section 9 is adopted, and only in case such amendment is adopted, then the following amendments will be necessary:

“1. Amend section 9 by inserting in line 18 of page 15, after the words ‘so claimed,’ the following: ‘and if suit shall be so instituted.’

“2. And by amending section 11 by inserting, after the words ‘on order’ in line 10 on page 26, the words ‘of the Secretary of Commerce as set forth in section 9 hereof’ or,

“3. And by amending section 11 by striking out lines 14 and 15 of page 26 and inserting in their places the following: ‘and



pay to the person to whom the Secretary of Commerce shall so order or in whose behalf the court shall enter final judgment or decree any property of an enemy or ally of.'

"And by amending section 11 by striking out the words 'of the court' in line 17 of page 26 and inserting the following: 'of the Secretary of Commerce or said final judgment or decree of the court.'

"The absolute impossibility, in a bill affecting legal rights and statutes, of inserting amendments in debate without thorough consideration, is very well illustrated by the insertion of these two amendments of Congressman Parker and Congressman Mann, because they necessitated other changes throughout the bill.

"Senator Vardaman. That, you know, is so often done in Congress with the idea of just throwing them into the hopper, or taking them into the stomach—into the legislative system—to be digested by the conference; and you have pointed out the evil of such a practice.

"Mr. Warren. Of course it is peculiarly disastrous in a bill that affects legal rights and status. In the case of legislation of an administrative character it is not so fatal; but it is absolutely fatal in a bill affecting court procedure. Is there any other question on that point?

**§ 1272. United States Trading With the Enemy Act Being the Act of Congress, Approved October 6, 1917.<sup>28</sup>**

AN ACT to define, regulate, and punish trading with the enemy, and for other purposes.

Sec. 1. TITLE OF ACT.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Trading with the enemy Act."*

<sup>28</sup> Public No. 91, 65th Congress H. R. 4960; reported in United States Compiled Statutes, sec. 3115½a et seq. Amended by Ap-

propriation Act of March 28, 1918. [Public—No. 109—65th Congress (H. R. 9867).]

## Sec. 2. DEFINITIONS.

*Meaning of Word "Enemy."* That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

*Meaning of Words "Ally of Enemy."* The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory or such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

*Meaning of Word "Person."* The word "person," as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic.

*Meaning of Words "United States."* The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

*Meaning of Words "the Beginning of the War."* The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared war or shall declare war or the existence of a state of war.

*Meaning of Words "End of the War."* The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

*Meaning of Words "Bank or Banks."* The words "bank or banks," as used herein, shall be deemed to mean and include

national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

*Meaning of Words "to Trade."* The words "to trade," as used herein, shall be deemed to mean—

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with.

### Sec. 3. WHAT IS UNLAWFUL UNDER THE ACT.

(a) *Trading.* That it shall be unlawful—

For any person in the United States, except with the license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act, to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

(b) *To Transport Into United States Subjects of Enemy.* For any person, except with the license of the President, to transport or attempt to transport into or from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy

or ally of enemy nation, with knowledge or reasonable cause to believe that the person transported or attempted to be transported is such subject or citizen.

(c) *To Send Certain Letters.* For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of an enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder by the President or by such person as he may direct), to send, or take out of, or bring into, or attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail; and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: *Provided, however,* That any person may send, take, or transmit out of the United States anything herein forbidden if he shall first submit the same to the President, or to such officer as the President may direct, and shall obtain the license or consent of the President, under such rules and regulations, and with such exemptions, as shall be prescribed by the President.

(d) *President May Create Censorship.* Whenever, during the present war, the President shall deem that the public safety demands it, he may cause to be censored under such rules and regulations as he may from time to time establish, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country. Any person who willfully evades or attempts to evade the submission of any such communication to such censorship or will-

fully uses or attempts to use any code or other device for the purpose of concealing from such censorship the intended meaning of such communication shall be punished as provided in section sixteen of this Act.

#### Sec. 4. LICENSES TO ENEMY INSURANCE COMPANIES AND OTHERS.

(a) Every enemy or ally of enemy insurance or reinsurance company, and every enemy or ally of enemy, doing business within the United States through an agency or branch office, or otherwise, may, within thirty days after the passage of this Act, apply to the President for a license to continue to do business; and, within thirty days after such application, the President may enter an order either granting or refusing to grant such license. The license, if granted, may be temporary or otherwise, and for such period of time, and may contain such provisions and conditions regulating the business, agencies, managers and trustees and the control and disposition of the funds of the company, or of such enemy or ally of enemy, as the President shall deem necessary for the safety of the United States; and any license granted hereunder may be revoked or regranted or renewed in such manner and at such times as the President shall determine: *Provided, however,* That reasonable notice of his intent to refuse to grant a license or to revoke a license granted to any reinsurance company shall be given by him to all insurance companies incorporated within the United States and known to the President to be doing business with such reinsurance company: *Provided further,* That no insurance company, organized within the United States, shall be obligated to continue any existing contract, entered into prior to the beginning of the war, with any enemy or ally of enemy insurance or reinsurance company, but any such company may abrogate and cancel any such contract by serving thirty days' notice in writing upon the President of its election to abrogate such contract.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made by any enemy or ally of enemy insurance or reinsurance company, within such thirty days as above provided, the provisions of the President's proclamation of April sixth, nineteen hundred and seventeen, relative to agencies in the United States of certain insurance companies, as modified by the provisions of the President's proclamation of July thirteenth, nineteen hundred and seventeen, relative to marine and war-risk insurance, shall remain in full force and effect so far as it applies to such German insurance companies, and the conditions of said proclamation of April sixth, nineteen hundred and seventeen, as modified by said proclamation of July thirteenth, nineteen hundred and seventeen, shall also during said period of thirty days after the passage of this Act, and pending the order of the President as herein provided, apply to any enemy or ally of enemy insurance or reinsurance company, anything in this Act to the contrary notwithstanding. It shall be unlawful for any enemy or ally of enemy insurance or reinsurance company, to whom license is granted, to transmit out of the United States any funds belonging to or held for the benefit of such company or to use any such funds as the basis for the establishment directly or indirectly of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made within such thirty days by any enemy or ally of enemy, other than an insurance or reinsurance company as above provided, it shall be lawful for such enemy or ally of enemy to continue to do business in this country and for any person to trade with, to, from, for, on account of, on behalf of or for the benefit of such enemy or ally of enemy, anything in this Act to the contrary notwithstanding: *Provided, however,* That the provisions of sections three and sixteen hereof shall

apply to any act or attempted act of transmission or transfer of money or other property out of the United States and to the use or attempted use of such money or property as the basis for the establishment of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy

If no license is applied for within thirty days after the passage of this Act, or if a license shall be refused to any enemy or ally of enemy, whether insurance or reinsurance company or other person, making application, or if any license granted shall be revoked by the President, the provisions of sections three and sixteen hereof shall forthwith apply to all trade or to any attempt to trade with, to, from, for, by, on account of, or on behalf of, or for the benefit of such company or other person: *Provided, however,* That after such refusal or revocation, anything in this Act to the contrary notwithstanding, it shall be lawful for a policyholder or for an insurance company, not an enemy or ally of enemy, holding insurance or having effected reinsurance in or with such enemy or ally of enemy insurance or reinsurance company, to receive payment of, and for such enemy or ally of enemy insurance or reinsurance company to pay any premium, return premium, claim, money, security, or other property due or which may become due on or in respect to such insurance or reinsurance in force at the date of such refusal or revocation of license; and nothing in this Act shall vitiate or nullify then existing policies or contracts of insurance or reinsurance, or the conditions thereof; and any such policyholder or insurance company, not an enemy or ally of enemy, having any claim to or upon money or other property of the enemy or ally of enemy insurance or reinsurance company in the custody or control of the alien property custodian, hereinafter provided for, or of the Treasurer of the United States, may make application for the payment thereof and may institute suit as provided in section nine hereof.



(b) *No Change of Name by Enemy, or Enemy Firm.* That, during the present war, no enemy, or ally of enemy, and no partnership of which he is a member or was a member at the beginning of the war, shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the President.

*President's Power to Prohibit or License Enemy Insurance Company.* Whenever, during the present war, in the opinion of the President the public safety or public interest requires, the President may prohibit any or all foreign insurance companies from doing business in the United States, or the President may license such company or companies to do business upon such terms as he may deem proper.

#### Sec. 5. PRESIDENT'S POWER TO SUSPEND PROVISIONS OF ACT.

(a) That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation, suspend the provisions of this Act so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof, and to perform any act made unlawful without such license in section three hereof, and to file and prosecute applications under subsection (b) of section ten hereof; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war.

*President to Make Rules and Regulations to Carry Out Act.*<sup>29</sup> And he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act.

*President May Exercise Power Through Officers.*<sup>30</sup> And the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct.

*President's Power When Sec. 3 About to Be Violated.* If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b) *President May Regulate Transactions in Foreign Exchange.* That the President may investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, export or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form (other than credits relating solely to transactions to be executed wholly within the United States), and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, whether enemy, ally of enemy or otherwise, or between residents of one or more foreign countries, by any person within the United States; and he may require any such person engaged in any such transaction to furnish, under oath, complete information relative thereto, including the production of any books of account, contracts, letters or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed.

<sup>29</sup> See Rules and Regulations laid down by the President's Executive Order of October 12, 1917, and of April 2, 1918

<sup>30</sup> See Delegation of Powers by President's Executive Order of October 12, 1917, and of April 2 1918.

## Sec. 6. ALIEN PROPERTY CUSTODIAN.

That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed \$5,000 per annum) of an official to be known as the alien property custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this Act; and to hold, administer, and account for the same under the general direction of the President and as provided in this Act. The alien property custodian shall give such bond or bonds, and in such form and amount, and with such security as the President shall prescribe. The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the provisions of this Act: *Provided*, That such clerks, investigators, accountants, and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law.

*President's Yearly Report of Proceedings Under Act. Provided further*, That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding. Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof.

## Sec. 7. REPORTS OF CORPORATIONS OF ENEMY STOCKHOLDERS.

(a) That every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall, under such

rules and regulations as the President may prescribe and, within sixty days after the passage of this Act, and at such other times thereafter as the President may require, transmit to the alien property custodian a full list, duly sworn to, of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company, or trustee has reasonable cause to believe to be an enemy or ally of enemy resident within the territory, or a subject or citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, of any ally of any nation with which the United States is at war, together with the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest.

The president may also require a similar list to be transmitted of all stock or shares owned on February third, nineteen hundred and seventeen, by any person now defined as an enemy or ally of enemy, or in which any such person had any interest; and he may also require a list to be transmitted of all cases in which said corporation, association, company, or trustee has reasonable cause to believe that the stock or shares on February third, nineteen hundred and seventeen, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another: *Provided, however,* That the name of any such officer, director, or stockholder shall be stricken permanently or temporarily from such list by the alien property custodian when he shall be satisfied that he is not such enemy or ally of enemy.

*Report of All Holders of Enemy Property or Credits.* Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to

an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this Act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the alien-property custodian by written statement under oath containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen: *Provided*, That the name of any person shall be stricken from the said report by the alien-property custodian, either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy. The President may extend the time for filing the lists or reports required by this section for an additional period not exceeding ninety days.

(b) *Effect of Act on Relations With Enemies.* Nothing in this Act contained shall render valid or legal, or be construed to recognize as valid or legal, any act or transaction constituting trade with, to, from, for or on account of, or on behalf or for the benefit of an enemy performed or engaged in since the beginning of the war and prior to the passage of this Act, or any such act or transaction hereafter performed or engaged in except as authorized hereunder, which would otherwise have been or be void, illegal, or invalid at law. No conveyance, transfer, delivery, payment, or loan of money or other property, in violation of section three hereof, made after the passage of this Act, and not under license as herein provided shall confer or create any right or remedy in respect thereof; and no person shall by virtue of any assignment, indorsement, or delivery to him of any debt, bill, note, or other obligation or chose in action by, from, or on behalf of, or on account of, or for the benefit

of an enemy or ally of enemy have any right or remedy against the debtor, obligor, or other person liable to pay, fulfill, or perform the same unless said assignment, indorsement, or delivery was made prior to the beginning of the war or shall be made under license as herein provided, or unless, if made after the beginning of the war and prior to the date of passage of this Act, the person to whom the same was made shall prove lack of knowledge and of reasonable cause to believe on his part that the same was made by, from or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy; and any person who knowingly pays, discharges, or satisfies any such debt, note, bill, or other obligation or chose in action shall, on conviction thereof, be deemed to violate section three hereof: *Provided*, That nothing in this Act contained shall prevent the carrying out, completion, or performance of any contract, agreement, or obligation originally made with or entered into by an enemy or ally of enemy where, prior to the beginning of the war and not in contemplation thereof, the interest of such enemy or ally of enemy devolved by assignment or otherwise upon a person not an enemy or ally of enemy, and no enemy or ally of enemy will be benefited by such carrying out, completion, or performance otherwise than by release from obligation thereunder.

Nothing in this Act shall be deemed to prevent payment of money belonging or owing to an enemy or ally of enemy to a person within the United States not an enemy or ally of enemy, for the benefit of such person or of any other person within the United States, not an enemy or ally of enemy, if the funds so paid shall have been received prior to the beginning of the war and such payments arise out of transactions entered into prior to the beginning of the war, and not in contemplation thereof; *Provided*, That such payment shall not be made without the license of the President, general or special, as provided in this Act.

Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court

within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in section ten hereof: *Provided, however,* That an enemy or ally of enemy licensed to do business under this Act may prosecute and maintain any such suit or action so far as the same arises solely out of the business transacted within the United States under such license and so long as such license remains in full force and effect: *And provided further,* That an enemy or ally of enemy may defend by counsel any suit in equity or action at law which may be brought against him.

Receipt of notice from the President to the effect that he has reasonable ground to believe that any person is an enemy or ally of enemy shall be prima facie defense to any one receiving the same, in any suit or action at law or in equity brought or maintained, or to any right or set-off or recoupment asserted by, such person and based on failure to complete or perform since the beginning of the war any contract or other obligation. In any prosecution under section sixteen hereof, proof of receipt of notice from the President to the effect that he has reasonable cause to believe that any person is an enemy or ally of enemy shall be prima facie evidence that the person receiving such notice has reasonable cause to believe such other person to be an enemy or ally of enemy within the meaning of section three hereof.<sup>31</sup>

(c) (d) (e) *Payments by Holder of Enemy Property to Custodian.* (c) If the President shall so require, any money or other property owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the alien property custodian.

<sup>31</sup> The President's Executive Order of October 12, 1917, title XXIX et seq. (the text of which is printed infra this chapter), delegated to the alien property custodian the powers

vested in the President by sec. 7 (c) of the Trading with the Enemy Act. See also Executive Order of April 2, 1918, published in Official Bulletin, Washington, April 4, 1918.

(d) If not required to pay, convey, transfer, assign, or deliver under the provisions of subsection (c) hereof, any person not an enemy or ally of enemy who owes to, or holds for, or on account of, or on behalf of, or for the benefit of an enemy or of an ally of enemy not holding a license granted by the President hereunder, any money or other property, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, may, at his option, with the consent of the President, pay, convey, transfer, assign, or deliver to the alien property custodian said money or other property under such rules and regulations as the President shall prescribe.

(e) No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee. The President shall issue to every person so appointed a certificate of the appointment and authority of such person, and such certificate shall be received in evidence in all courts within the United States. Whenever any such certificate



of authority shall be offered to any registrar, clerk, or other recording officer, Federal or otherwise, within the United States, such officer shall record the same in like manner as a power of attorney, and such record or a duly certified copy thereof shall be received in evidence in all courts of the United States or other courts within the United States.

Sec. 8. NOTICE TO CUSTODIAN BY PLEDGEE OF ENEMY PROPERTY.

(a) That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the alien property custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally: *Provided*, That no such rule or regulation shall require that notice or presentation or demand shall be served or made in any case in which, by law or by the terms of said instrument or contract, no notice, presentation, or demand was, prior to the passage of this Act, required; and that in case where, by law or by the terms of such instrument or contract, notice is required, no longer period of notice shall be required: *Provided further*, That if, on any such disposition of property, a surplus shall remain after the satisfaction of the mortgage,

pledge, lien, or other right in the nature of security, notice of that fact shall be given to the President pursuant to such rules and regulations as he may prescribe, and such surplus shall be held subject to his further order.

(b) *Abrogation of Contracts With Enemy.* That any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States, and an enemy or ally of an enemy, the terms of which provide for the delivery, during or after any war in which a present enemy or ally of enemy nation has been or is now engaged, of anything produced, mined, or manufactured in the United States, may be abrogated by such citizen or corporation by serving thirty days' notice in writing upon the alien property custodian of his or its election to abrogate such contract.

(c) *Suspension of Statute of Limitations.* The running of any statute of limitations shall be suspended with reference to the rights or remedies on any contract or obligation entered into prior to the beginning of the war between parties neither of whom is an enemy or ally of enemy, and containing any promise to pay or liability for payment which is evidenced by drafts or other commercial paper drawn against or secured by funds or other property situated in an enemy or ally of enemy country, and no suit shall be maintained on any such contract or obligation in any court within the United States until after the end of the war, or until the said funds or property shall be released for the payment or satisfaction of such contract or obligation: *Provided, however,* That nothing herein contained shall be construed to prevent the suspension of the running of the statute of limitations in all other cases where such suspension would occur under existing law.

#### Sec. 9. RIGHTS OF PARTIES CLAIMING INTEREST IN PROPERTY IN HANDS OF ALIEN PROPERTY CUSTODIAN.

That any person, not an enemy, or ally of enemy, claiming any interest, right, or title in any money or other property which

may have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy, or ally of enemy, whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder, and held by him or by the Treasurer of the United States, may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the alien property custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application, or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the alien property custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if suit shall be so instituted then the money or other property of the enemy, or ally of enemy, against whom such interest, right, or title is asserted, or debt claimed, shall be retained in the custody of the

alien property custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant or by the alien property custodian or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant, or suit otherwise terminated.

Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the alien property custodian shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

This section shall not apply, however, to money paid to the alien property custodian under section ten hereof.

#### Sec. 10. APPLICATION OF ACT TO PATENTS, TRADEMARKS, ETC.

That nothing contained in this Act shall be held to make unlawful any of the following Acts:

(a) An enemy, or ally of enemy, may file and prosecute in the United States an application for letters patent, or for registration of trade-mark, print, label, or copyright, and may pay any fees therefor in accordance with and as required by the provisions of existing law and fees for attorneys or agents for filing and prosecuting such applications. Any such enemy, or ally of enemy, who is unable during war, or within six months thereafter, on account of conditions arising out of war, to file any such application, or to pay any official fee, or to take any action required by law within the period prescribed by law, may be granted an extension of nine months beyond the expiration of said period, provided the nation of which the said applicant is a citizen, subject, or corporation shall extend substantially similar privileges to citizens and corporations of the United States.

(b) Any citizen of the United States, or any corporation organized within the United States, may, when duly authorized

by the President, pay to an enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents and trade-marks, prints, labels, and copyrights; and any such citizen or corporation may file and prosecute an application for letters patent or for registration of trade-mark, print, label, or copyright in the country of an enemy, or of an ally of enemy after first submitting such application to the President and receiving license so to file and prosecute, and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the President.

(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, nonexclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding \$100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally

of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said licensee and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

(e) Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this Act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district

court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however,* That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further,* That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trademark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided*, That no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts.

(h) All powers of attorney heretofore or hereafter granted by an enemy or ally of enemy to any person within the United States, in so far as they may be requisite to the performance of acts authorized in subsections (a) and (g) of this section, shall be valid.

(i) Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner of Patents that, in violation of said order, said invention has been published or that an application for a patent therefor has been filed in any other country, by the inventor or his assigns or legal representatives, without the consent or approval of the commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the President above referred to shall tender his invention to the Government of the United States for its use, he shall, if he ultimately receives a



patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government.

Sec. 11. PRESIDENT TO MAKE PROCLAMATION AGAINST  
IMPORTING.

Whenever during the present war the President shall find that the public safety so requires and shall make proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: *Provided, however,* That no preference shall be given to the ports of one State over those of another.

Sec. 12. DISPOSITION OF MONEY AND PROPERTY BY CUSTODIAN.<sup>31a</sup>

That all moneys (including checks and drafts payable on demand) paid to or received by the alien property custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such securities shall be sold and the proceeds deposited in the Treasury.

All other property of an enemy, or ally of enemy, conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depository, or depositaries, of property of an enemy or ally of enemy, any bank, or banks, or trust company, or trust companies, or other suitable depository or depos-

<sup>31a</sup> See amendment to law under 1918. [Public—No. 109—65th Congress (H. R. 9867).]

itaries, located and doing business in the United States. The alien property custodian may deposit with such designated depository or depositories, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities, or property (except money or checks or drafts payable on demand which are required to be deposited with the Secretary of the Treasury) and such depository or depositories shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depository or by the alien property custodian into the Treasury of the United States as hereinbefore provided.

The President shall require all such designated depositories to execute and file bonds sufficient in his judgment to protect property on deposit, such bonds to be conditioned as he may direct.

The alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which shall come into his possession in pursuance of the provisions of this Act, and, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, may manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights which may be or become appurtenant thereto or to the ownership thereof, if and when necessary to prevent waste and protect such property and to the end that interests of the United States in such property and rights or of such person as may ultimately become entitled thereto, or to the proceeds thereof, may be preserved and safeguarded. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such

shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.<sup>31b</sup>

Any money or property required or authorized by the provisions of this Act to be paid, conveyed, transferred, assigned, or delivered to the alien property custodian shall, if said custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the alien property custodian.

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: *Provided, however*, That on order of the President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further*, That the Treasurer of the United States, on order of the alien property custodian shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee.

#### Sec. 13. DUTY OF MASTER OF DEPARTING VESSEL UNDER ACT.

That, during the present war, in addition to the facts required by sections forty-one hundred and ninety-seven, forty-one hundred and ninety-eight, and forty-two hundred of the Revised

<sup>31b</sup> Amendment found in Appropriation Act of March 28, 1918. [Public—No. 109—65th Congress (H. R. 9867).]

Statutes, as amended by the Act of June fifteenth, nineteen hundred and seventeen, to be set out in the master's and shipper's manifests before clearance will be issued to vessels bound to foreign ports, the master or person in charge of any vessel, before departure of such vessel from port, shall deliver to the collector of customs of the district wherein such vessel is located a statement duly verified by oath that the cargo is not shipped or to be delivered in violation of this Act, and the owners, shippers, or consignors of the cargo of such vessels shall in like manner deliver to the collector like statement under oath as to the cargo or the parts thereof laden or shipped by them, respectively, which statement shall contain also the names and addresses of the actual consignees of the cargo, or if the shipment is made to a bank or other broker, factor, or agent, the names and addresses of the persons who are the actual consignees on whose account the shipment is made. The master or person in control of the vessel shall, on reaching port of destination of any of the cargo, deliver a copy of the manifest and of the said master's, owner's, shipper's, or consignor's statement to the American consular officer of the district in which the cargo is unladen.

Sec. 14. COLLECTOR OF CUSTOMS MAY REFUSE CLEARANCE  
UNDER ACT.

That, during the present war, whenever there is reasonable cause to believe that the manifest or the additional statements under oath required by the preceding section are false or that any vessel, domestic or foreign, is about to carry out of the United States any property to or for the account or benefit of an enemy, or ally of enemy, or any property or person whose export, taking out, or transport will be in violation of law, the collector of customs for the district in which such vessel is located is hereby authorized and empowered subject to review by the President to refuse clearance to any such vessel, domestic

or foreign, for which clearance is required by law, and by formal notice served upon the owner, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, to forbid the departure of such vessel from the port, and it shall thereupon be unlawful for such vessel to depart.

*Collector of Customs to Report Export of Bullion, etc.* The collector of customs shall, during the present war, in each case report to the President the amount of gold or silver coin or bullion or other moneys of the United States contained in any cargo intended for export. Such report shall include the names and addresses of the consignors and consignees, together with any facts known to the collector with reference to such shipment and particularly those which may indicate that such gold or silver coin or bullion or moneys of the United States may be intended for delivery or may be delivered, directly or indirectly, to an enemy or an ally of enemy.

Sec. 15. APPROPRIATION TO CARRY OUT PROVISIONS OF ACT.<sup>31c</sup>

That the sum of \$450,000 is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to be used in the discretion of the President for the purpose of carrying out the provisions of this Act during the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for the payment of salaries of all persons employed under this Act, together with the necessary expenses for transportation, subsistence, rental of quarters in the District of Columbia, books of reference, periodicals, stationery, typewriters and exchanges thereof, miscellaneous supplies, printing to be done at the Government Printing Office, and all other necessary expenses not included in the foregoing.

Sec. 16. FINE AND PUNISHMENT FOR VIOLATIONS OF ACT.

That whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, with any order of the President issued in compliance with the and whoever shall willfully violate, neglect, or refuse to comply

<sup>31c</sup> Authorization of expenses March 28, 1918. [Public—No. 109—  
under act. See alien property cus- 65th Congress (H. R. 9867).]  
todian under Appropriation Act of 1918.]

provisions of this Act shall, upon conviction, be fined not more than \$10,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

**Secs. 17 and 18. JURISDICTION OF COURTS UNDER ACT.**

17. That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary."

18. That the several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under this Act committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses under this Act committed upon the high seas and of conspiracies to commit such offenses as defined by section thirty-seven of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, and the provisions of such section for the purpose of this Act are hereby extended to the Philippine Islands and to the Canal Zone.

**Sec. 19. PROHIBITION AGAINST NEWS ITEMS, ETC., IN FOREIGN LANGUAGE.**

That ten days after the approval of this Act and until the end of the war, it shall be unlawful for any person, firm, cor-

poration, or association, to print, publish, or circulate, or cause to be printed, published, or circulated in any foreign language, any news item, editorial or other printed matter, respecting the Government of the United States, or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war, or any matter relating thereto: *Provided*, That this section shall not apply to any print, newspaper, or publication where the publisher or distributor thereof, on or before offering the same for mailing, or in any manner distributing it to the public, has filed with the postmaster at the place of publication, in the form of an affidavit, a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper, or publication, and has caused to be printed, in plain type in the English language, at the head of each such item, editorial, or other matter, on each copy of such print, newspaper, or publication, the words "True translation filed with the postmaster at . . . . . on . . . . . (naming the post office where the translation was filed, and the date of filing thereof), as required by the Act of [here give the date of this Act].

Any print, newspaper, or publication in any foreign language which does not conform to the provisions of this section is hereby declared to be nonmailable, and it shall be unlawful for any person, firm, corporation, or association, to transport, carry, or otherwise publish or distribute the same, or to transport, carry or otherwise publish or distribute any matter which is made nonmailable by the provisions of the Act relating to espionage, approved June fifteenth, nineteen hundred and seventeen: *Provided further*, That upon evidence satisfactory to him that any print, newspaper, or publication, printed in a foreign language may be printed, published, and distributed free from the foregoing restrictions and conditions without detriment to the United States in the conduct of the present war, the President may cause to be issued to the printers or publishers of such print, newspaper, or publication, a permit to print, publish,

and circulate the issue or issues of their print, newspaper, or publication, free from such restrictions and requirements, such permits to be subject to revocation at his discretion. And the Postmaster General shall cause copies of all such permits and revocations of permits to be furnished to the postmaster of the post office serving the place from which the print, newspaper, or publication, granted the permit is to emanate. All matter printed, published and distributed under permits shall bear at the head thereof in plain type in the English language, the words, "Published and distributed under permit authorized by the Act of (here giving date of this Act), on file at the post office of (giving name of office)."

Any person who shall make an affidavit containing any false statement in connection with the translation provided for in this section shall be guilty of the crime of perjury and subject to the punishment provided therefor by section one hundred and twenty-five of the Act of March fourth, nineteen hundred and nine, entitled "An Act to codify, revise, and amend the penal laws of the United States," and any person, firm, corporation, or association, violating any other requirement of this section shall, on conviction thereof, be punished by a fine of not more than \$500, or by imprisonment of not more than one year, or, in the discretion of the court, may be both fined and imprisoned.

Approved, October 6, 1917.

### **§ 1273. Orders, Rules and Regulations of the President Issued and Authorized Under the Act.<sup>82</sup>**

#### **PREAMBLE.**

By virtue of the authority vested in me by "An act to define, regulate, and punish trading with the enemy, and for other pur-

<sup>82</sup> These Orders, Rules and Regulations were issued by President Wilson October 12, 1917, under authority vested in him by the United States Trading with the Enemy Act and by authority of title VII of the

Act approved June 15, 1917, being the so-called Espionage Act. See also further Executive Order of April 2, 1918, published in Official Bulletin, Washington, D. C., April 4, 1918.



poses," approved October 6, 1917, and by Title VII of the act approved June 15, 1917, entitled "An act to punish acts of interference with the foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage and better to enforce the criminal laws of the United States, and for other purposes" (hereinafter designated as the espionage act), I hereby make the following orders and rules and regulations:

I *et seq.* WAR TRADE BOARD ESTABLISHED.

I. I hereby establish a War Trade Board to be composed of representatives, respectively, of the Secretary of State, of the Secretary of the Treasury, of the Secretary of Agriculture, of the Secretary of Commerce, of the Food Administrator, and of the United States Shipping Board.

II. I hereby vest in said board the power and authority to issue licenses under such terms and conditions as are not inconsistent with law, or to withhold or refuse licenses, for the exportation of all articles, except coin, bullion, or currency, the exportation or taking of which out of the United States may be restricted by proclamations heretofore or hereafter issued by me under said Title VII of the espionage act.

III. I further hereby vest in said War Trade Board the power and authority to issue, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse, licenses for the importation of all articles the importation of which may be restricted by any proclamation hereafter issued by me under section 11 of the trading-with-the-enemy act.

IV. I further hereby vest in said War Trade Board the power and authority not vested in other officers by subsequent provisions of this order, to issue, under such terms and conditions as are not inconsistent with law; or to withhold or refuse, licenses to trade either directly or indirectly with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe

that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

V. I further hereby vest in said War Trade Board the power and authority, under such terms and conditions as are not inconsistent with law, to issue to every enemy or ally of enemy, other than enemy or ally of enemy insurance or reinsurance companies, doing business within the United States through an agency or branch office, or otherwise, applying therefor within 30 days of October 6, 1917, licenses, temporary or otherwise, to continue to do business, or said board may withhold or refuse the same.

VI. And I further hereby vest in said War Trade Board the executive administration of the provisions of section 4 (b) of the trading-with-the-enemy act relative to granting licenses to enemies and enemy allies to assume or use other names than those by which they were known at the beginning of the war. And I hereby authorize said board to issue licenses not inconsistent with the provisions of law or to withhold or refuse licenses to any enemy, or ally of enemy, or partnership of which an enemy or ally of enemy is a member or was a member at the beginning of the war, to assume or use any name other than that by which such enemy or ally of enemy or partnership was ordinarily known at the beginning of the war.

VII. I hereby revoke the Executive order of August 21, 1917, creating the Exports Administrative Board. All proclamations, rules, regulations, and instructions made or given by me under Title VII of the espionage act and now being administered by the Exports Administrative Board are hereby continued, confirmed, and made applicable to the War Trade Board, and all employees of the Exports Administrative Board are hereby transferred to and constituted employees of the War Trade Board in the same capacities, and said War Trade Board is

hereby authorized to exercise without interruption the powers heretofore exercised by said Exports Administrative Board.

VIII. The said War Trade Board is hereby authorized and empowered to take all such measures as may be necessary or expedient to administer the powers hereby conferred. And I hereby vest in the War Trade Board the power conferred upon the President by section 5 (a) to make such rules and regulations, not inconsistent with law, as may be necessary and proper for the exercise of the powers conferred upon said board.

#### IX. WAR TRADE COUNCIL ESTABLISHED

IX. I hereby establish a War Trade Council to be composed of the Secretary of State, Secretary of the Treasury, Secretary of Agriculture, Secretary of Commerce, the Food Administrator, and the chairman of the Shipping Board, and I hereby authorize and direct the said War Trade Council thus constituted to act in an advisory capacity in such matters under said acts as may be referred to them by the President or the War Trade Board.

#### X *et seq.* POWERS OF SECRETARY OF THE TREASURY

X. I hereby vest in the Secretary of the Treasury the executive administration of any investigation, regulation, or prohibition of any transaction in foreign exchange, export, or earmarkings of gold or silver coin or bullion or currency, transfers of credit in any form—other than credits relating solely to transactions to be executed wholly within the United States—and transfers of evidences of indebtedness or of the ownership of property between the United States and any foreign country, or between residents of one or more foreign countries, by any person within the United States; and I hereby vest in the Secretary of the Treasury the authority and power to require any person engaged in any such transaction to furnish under oath complete information relative thereto, including the production of any books of account, contracts, letters, or other papers in connection therewith in the custody or control of such person, either before or after such transaction is completed.

XI. I further hereby vest in the Secretary of the Treasury the executive administration of the provisions of subsection (c) of section 3 of the trading-with-the-enemy act relative to sending, or taking out of, or bringing into, or attempting to send, take out of, or bring into, the United States any letter, writing, or tangible form of communication except in the regular course of the mail; and of the sending, taking, or transmitting, or attempting to send, take, or transmit, out of the United States any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy. And said Secretary of the Treasury is hereby authorized and empowered to issue licenses to send, take, or transmit out of the United States anything otherwise forbidden by said subsection (c) and give such consent or grant such exemption in respect thereto, as is not inconsistent with law, or to withhold or refuse the same.

XII. I further authorize the Secretary of the Treasury to grant a license under such terms and conditions as are not inconsistent with law or to withhold or refuse the same to any "enemy" or "ally of enemy" insurance or reinsurance company doing business within the United States through an agency or branch office or otherwise, which shall make application within 30 days of October 6, 1917.

XIII. I hereby authorize and direct the Secretary of the Treasury, for the purpose of such executive administration, to take such measures, adopt such administrative procedure, and use such agency or agencies as he may from time to time deem necessary and proper for that purpose. The proclamation of the President, dated September 7, 1917, made under authority vested in him by Title VII of said act of Congress, approved June 15, 1917, shall remain in full force and effect. The Executive order, dated September 7, 1917, made under the authority of said title shall remain in full force and effect until new

regulations shall have been established by the President, or by the Secretary of the Treasury, with the approval of the President, and thereupon shall be superseded.

XIV *et seq.* CENSORSHIP BOARD ESTABLISHED.

XIV. I hereby establish a Censorship Board to be composed of representatives, respectively, of the Secretary of War, the Secretary of the Navy, the Postmaster General, the War Trade Board and the chairman of the Committee on Public Information.

XV. And I hereby vest in said Censorship Board the executive administration of the rules, regulations, and proclamations from time to time established by the President under subsection (d) of section 3, of the trading-with-the-enemy act, for the censorship of communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country from time to time specified by the President, or carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country.

XVI. The said Censorship Board is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

XVII *et seq.* POWERS OF FEDERAL TRADE COMMISSION.

XVII. I further hereby vest in the Federal Trade Commission the power and authority to issue licenses under such terms and conditions as are not inconsistent with law or to withhold or refuse the same to any citizen of the United States or any corporation organized within the United States to file and prosecute applications in the country of an enemy or ally of enemy for letters patent or for registration of trade-mark, print, label, or copyright, and to pay the fees required by law and the customary agents' fees, the maximum amount of which in each

case shall be subject to the control of such commission; or to pay to any enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents, trade-marks, prints, labels, and copyrights.

XVIII. I hereby vest in the Federal Trade Commission the power and authority to issue, pursuant to the provisions of section 10 (c) of the trading-with-the-enemy act, upon such terms and conditions as are not inconsistent with law, or to withhold or refuse, a license to any citizen of the United States, or any corporation organized within the United States, to manufacture or cause to be manufactured a machine, manufacture, composition of matter, or design, or to carry on or cause to be carried on a process under any patent, or to use any trade-mark, print, label, or copyrighted matter owned or controlled by an enemy or ally of enemy, at any time, during the present war; and also to fix the prices of articles and products manufactured under such licenses necessary to the health of the military and the naval forces of the United States, or the successful prosecution of the war; and to prescribe the fee which may be charged for such license, not exceeding \$100 and not exceeding 1 per cent. of the fund deposited by the licensee with the alien property custodian as provided by law.

XIX. I hereby further vest in the said Federal Trade Commission the executive administration of the provisions of section 10 (d) of the trading-with-the-enemy act, the power and authority to prescribe the form of, and time and manner of filing statements of the extent of the use and enjoyment of the license and of the prices received and the times at which the licensee shall make payments to the alien property custodian, and the amounts of said payments, in accordance with the trading-with-the-enemy act.

XX. I further hereby vest in the Federal Trade Commission the power and authority, whenever in its opinion the publication of an invention or the granting of a patent may be detrimental to the public safety or defense, or may assist the

enemy, or endanger the successful prosecution of the war, to order that the invention be kept secret and the grant of letters patent withheld until the end of the war.

XXI. The said Federal Trade Commission is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

XXII *et seq.* POWERS OF THE POSTMASTER GENERAL.

XXII. I hereby vest in the Postmaster General the executive administration of all the provisions (except the penal provisions) of section 19 of the trading-with-the-enemy act, relating to the printing, publishing, or circulation in any foreign language of any news item, editorial, or other printed matter respecting the Government of the United States or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war or any matter relating thereto, and the filing with the postmaster at the place of publication, in the form of an affidavit of a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper, or publications, and the issuance of permits for the printing, publication, and distribution thereof free from said restriction. And the Postmaster General is authorized and empowered to issue such permits upon such terms and conditions as are not inconsistent with law, and to refuse, withhold, or revoke the same.

XXIII. The sum of \$35,000, or so much thereof as may be necessary, is hereby allotted out of the funds appropriated by the trading-with-the-enemy act to be expended by the Postmaster General in the administration of said section 19 thereof.

XXIV. The Postmaster General is hereby authorized to take all such measures as may be necessary or expedient to administer the powers hereby conferred.

XXV *et seq.* POWERS OF SECRETARY OF STATE.

XXV. I hereby vest in the Secretary of State the executive administration of the provisions of subsection (b) of section 3

of the trading-with-the-enemy act relative to any person transporting or attempting to transport any subject or citizen of an enemy or ally of enemy nation, and relative to transporting or attempting to transport by any owner, master, or other person in charge of a vessel of American registry, from any place to any other place, such subject or citizen of an enemy or enemy ally.

XXVI. And I hereby authorize and empower the Secretary of State to issue licenses for such transportation of enemies and enemy allies or to withhold or refuse the same.

XXVII. And said Secretary of State is hereby authorized and empowered to take all such measures as may be necessary or expedient to administer the powers hereby conferred and to grant, refuse, withhold or revoke licenses thereunder.

#### XXVIII *et seq.* POWERS OF SECRETARY OF COMMERCE

XXVIII. I hereby vest in the Secretary of Commerce the power to review the refusal of any collector of customs under the provisions of sections 13 and 14 of the trading-with-the-enemy act to clear any vessel, domestic or foreign, for which clearance is required by law.

#### XXIX *et seq.* POWERS OF ALIEN PROPERTY CUSTODIAN.<sup>32a</sup>

XXIX. I hereby vest in an alien property custodian, to be hereafter appointed, the executive administration of all the provisions of section 7 (a), section 7 (c), and section 7 (d) of the trading-with-the-enemy act, including all power and authority to require lists and reports, and to extend the time for filing the same, conferred upon the President by the provisions of said section 7 (a), and including the power and authority conferred upon the President by the provisions of said section 7 (c), to require the conveyance, transfer, assignment, delivery, or payment to himself, at such time and in such manner as he shall prescribe, of any money or other properties owing to or belonging to or held for, by or on account of, or on behalf of, or for the benefit of any enemy or ally of an enemy not holding a license granted under the provisions of the trading-with-the-

<sup>32a</sup> See Additional Executive Order Bulletin, Washington, D. C., April of April 2, 1918, published in Official 4, 1918.



enemy act, which, after investigation, said alien property custodian shall determine is so owing, or so belongs, or is so held.

XXX. Any person who desires to make conveyance, transfer, payment, assignment, or delivery, under the provisions of section 7 (d) of the trading-with-the-enemy act, to the alien property custodian of any money or other property owing to or held for, by or on account of, or on behalf of, or for the benefit of an enemy or ally of enemy, not holding a license granted as provided in the trading-with-the-enemy act, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, shall file application with the alien property custodian for consent and permit to so convey, transfer, assign, deliver, or pay such money or other property to him, and said alien property custodian is hereby authorized to exercise the power and authority conferred upon the President by the provisions of said section 7 (d) to consent and to issue permit upon such terms and conditions as are not inconsistent with law, or to withhold or refuse the same.

XXXI. I further vest in the alien property custodian the executive administration of all the provisions of section 8 (a), section 8 (b), and section 9 of the trading-with-the-enemy act, so far as said sections relate to the powers and duties of said alien property custodian.

XXXII. I vest in the Attorney General all power and authority conferred upon the President by the provisions of section 9 of the trading-with-the-enemy act.

XXXIII. The alien property custodian to be hereafter appointed is hereby authorized to take all such measures as may be necessary or expedient, and not inconsistent with law, to administer the powers hereby conferred; and he shall further have the power and authority to make such rules and regulations not inconsistent with law as may be necessary and proper to carry out the provisions of said section 7 (a), section 7 (c), section 7 (d), section 8 (a), and section 8 (b), conferred upon the President by the provisions thereof and by the provisions

of section 5 (a), said rules and regulations to be duly approved by the Attorney General.

XXXIV. The alien property custodian to be hereafter appointed shall, "under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe," have administration of all moneys (including checks and drafts payable on demand) and of all property, other than money which shall come into his possession in pursuance of the provisions of the trading-with-the-enemy act, in accordance with the provisions of section 6, section 10, and section 12 thereof.

(Signed) WOODROW WILSON.

THE WHITE HOUSE,  
*October 12, 1917.*

#### ENGLISH TRADING WITH THE ENEMY ACTS

The British government, being at war with Germany and her allies, found it necessary on September 18, 1914, to pass an act of Parliament entitled the Trading With the Enemy Act of 1914.<sup>33</sup> Two months later the Trading With the Enemy Amendment Act of 1914<sup>34</sup> was passed, and on July 29, 1915, the Trading With the Enemy Amendment Act of 1915.<sup>35</sup> Finally on January 27, 1916, was passed an act to amend the Trading With the Enemy Acts.<sup>36</sup> "This act may be cited as the Trading With the Enemy Amendment Act of 1916, and shall be construed as one with the Trading With the Enemy Acts of 1914 and 1915, and those acts and this act may be cited together as the Trading With the Enemy Acts of 1914 to 1916.

**§ 1274. History and Comment on English Trading With the Enemy Acts.** (a) **General Scope.** As a receiver is appointed by courts to preserve the property claimed by contesting litigants, so will in times of war a custodian be appointed of the property of one contesting nation or of the citizens of such

<sup>33</sup> 4 and 5 Geo. 5, ch. 87.

<sup>34</sup> 5 Geo. 5, ch. 12.

<sup>35</sup> 5 and 6 Geo. 5, ch. 79.

<sup>36</sup> 5 and 6 Geo. 5, ch. 105.

contesting nation when such property lies within the confines of the other contesting nation. In the case of the appointment of a receiver by a court, such court acting through its receiver is a mere uninterested stakeholder—a neutral party acting blindly to enforce justice as may be decreed at the end of the pending litigation. When one nation at war seizes the property of the other nation it can not well be said that it holds it as a neutral party, yet as to that property the custodian himself holds it as a stakeholder subject to the orders of his government from time to time and theoretically subject to the outcome of the war.

In addition to the Trading With the Enemy Acts just referred to we find the Trading With the Enemy (Copyright) Act of 1916,<sup>37</sup> which shall be construed as one with the Trading With the Enemy Act of 1914.<sup>38</sup> Also the Trading With the Enemy Export of Prohibited Goods Act of 1916.<sup>39</sup>

The Trading With the Enemy Amendment Act of 1914 which shall be construed as one with the principal act<sup>40</sup> provides as follows: "Nothing in this act shall be construed as limiting the power of His Majesty by proclamation to prohibit any transaction which is not prohibited by this act, or by license to permit any transaction which is so prohibited."<sup>41</sup> We find accordingly a proclamation by the king issued September 14, 1915,<sup>42</sup> and January 7, 1915.<sup>43</sup>

These Trading With the Enemy Acts provide for the carrying into effect and the enforcement of the acts by various provisions which we shall refer to hereafter. Many of such provisions such as the appointment of a custodian<sup>44</sup> and direction of said custodian by the High Court demand certain pro-

<sup>37</sup> 6 and 7 Geo. 5, ch. 32.

<sup>38</sup> 6 and 7 Geo. 5, ch. 32-2.

<sup>39</sup> 6 and 7 Geo. 5, ch. 53.

<sup>40</sup> Trading with the Enemy Amendment Act (1914), 14(1) (5 Geo. 5, ch. 12-14[1]).

<sup>41</sup> Trading with the Enemy Amendment Act (1914), 14(4) (5 Geo. 5, ch. 12-14[4]).

<sup>42</sup> Published in the Law Times, September 18, 1915, Vol. 139-426.

<sup>43</sup> Published in The Weekly Notes, January 16, 1915, page 65.

<sup>44</sup> Trading with the Enemy Amendment Act (1914), 5(5) (4 and 5 Geo. 5).

ceedings before such court. Provision for the practice and procedure to be adopted before the High Court is to be made by the lord chancellor.<sup>45</sup>

The Trading With the Enemy Act of 1914, which shall be construed <sup>46</sup> with the Trading With the Enemy Acts of 1916, provides as follows:

5. "In England and Ireland the lord chancellor and the lord chancellor for Ireland may by rules, and in Scotland the Court of Sessions may by act of sederunt, make provision for the practice and procedure to be adopted for the purposes of this and the last preceding section, namely, the vesting of property in the custodian and the management of such property by the custodian."<sup>47</sup>

Such rules for the practice and procedure in the matter carrying out the provisions of the act relating to the holding of property by the custodian have been adopted by the lord chancellor and promulgated January 16, 1915.<sup>48</sup> They are called: Rules. The Trading With the Enemy (Vesting and Application of Property), Rules of 1915, dated January 11, 1915, made by the lord chancellor under the Trading With the Enemy Act of 1914 (5 Geo. 5, cap. 12). Following these came Trading With the Enemy (Vesting and Application of Property) Amendment Rules of 1916 (No. 2).<sup>49</sup> These Rules No. 2 annul Rules 4 and 5 of Rules of 1915 and substitute rules in lieu thereof.

The English Trading With the Enemy Act of 1914 and the Amendment Acts of 1914 and 1916, together with the Trading With the Enemy and Export of Prohibited Goods Acts of 1916, provide four drastic methods of finding out whether an offense of trading with the enemy has been committed, and for pre-

<sup>45</sup> Trading with the Enemy Amendment Act (1915), 5(5) (5 Geo. 5, ch. 12-5[5]).

<sup>46</sup> Trading with the Enemy Amendment Act (1916), (5 and 6 Geo. 5, ch. 105, sec. 16).

<sup>47</sup> Trading with the Enemy Amendment Act (1914), 5(5) (5 Geo. 5, ch. 12-5[5]).

<sup>48</sup> Printed in The Weekly Notes, January 16, 1915, page 65.

<sup>49</sup> Printed in The Weekly Notes, June 10, 1916, page 272.

venting the continuance, namely, the appointment of an inspector, of a controller, of a custodian, and the winding up of the business by the controller.

(b) **Appointment of Inspectors.**<sup>50</sup> Power of inspection of books, documents, etc., is provided for in the Trading With the Enemy Act of 1914:

2—(1). If a justice of the peace is satisfied, on information or oath laid on behalf of a Secretary of State or the Board of Trade, that there is reasonable ground for suspecting that an offense under this act has been or is about to be committed by any person, firm or company, he may issue a warrant authorizing any person appointed by a Secretary of State or the Board of Trade and named in the warrant to inspect all books or documents belonging to or under the control of that person, firm or company, and to require any person able to give any information with respect to the business or trade of that person, firm or company to give that information, and if accompanied by a constable to enter and search any premises used in connection with the business or trade, and to seize any such books and documents as aforesaid; a further provision against destroying or mutilating or falsifying books or documents was inserted in "An act to amend the law relating to trading with the enemy and the export of prohibited goods," passed December 18, 1916 (6 and 7 Geo. 5, cap. 52).

(c) **Controller of Alien Property.** Sec. 3 of the Trading With the Enemy Act of 1914 (principal act) provides as follows: Where it appears to the Board of Trade in reference to any firm or company—

(a) that an offense under this Act has been or is likely to be committed in connection with the trade or business thereof; or

(b) that the control or management thereof has been or is likely to be so affected by the state of war as to prejudice the effective continuance of its trade or business and that it is in

<sup>50</sup> Trading with the Enemy Act (1914), 2 (1) (4 and 5 Geo. 5 ch. 87-2-1).

the public interest that the trade or business should continue to be carried on,<sup>51</sup> the Board of Trade may apply to the High Court for the appointment of a controller of the firm or company.

Such controller is appointed over any firm when it appears that such firm or company has committed an offense under the Trading With the Enemy Act and should be watched and controlled.

The High Court shall have power to appoint such a controller for such time and subject to such conditions and with such powers as the court thinks fit, and the powers so conferred shall be either those of a receiver and manager or those powers subject to such modifications, restrictions or extensions as the court thinks fit (including, if the court considers it necessary or expedient for enabling the controller to borrow money power after special application to the court for that purpose, to create charges on the property of the firm or company in priority to existing charges).

The Board of Trade also has the power to appoint a controller to control and supervise the carrying out of any order such Board of Trade may make prohibiting any alien firm or company from carrying on business.<sup>52</sup>

**(d) Winding Up of Enemies' Business.** The English Trading With the Enemy Amended Act of 1916 provides as follows:

1.<sup>53</sup> Where it appears to the Board of Trade that the business carried on in the United Kingdom by any person, firm or company is, by reason of the enemy nationality or enemy association of that person, firm or company, or of the members of that firm or company or any of them, or otherwise carried on wholly or mainly for the benefit of or under the control of enemy subjects, the Board of Trade shall, unless for any special reason it appears to them inexpedient to do so, make an order either—

<sup>51</sup> 4 and 5 Geo. 5, ch. 87-3.

<sup>52</sup> Trading with the Enemy Amendment Act (1916), 1(2).

<sup>53</sup> An Act to Amend the Trading with the Enemy Acts, 27, January, 1916, (5 and 6 Geo. 5 ch. 105).

(a) prohibiting the person, firm, or company from carrying on the business, except for the purposes and subject to the conditions, if any, specified in the order, or

(b) requiring the business to be wound up. .

The carrying out of such a prohibitory order or the winding up of the company affairs is accomplished by the Board of Trade appointing a controller of such enemy business. When such controller winds up the enemy business he has conferred upon him "such powers as are exercisable by a liquidator in a voluntary winding up of a company and has power to apply to the High Court or a judge thereof to determine any question arising in the carrying out of the order."<sup>54</sup>

**(e) Custodian of Enemy Property.** The first English Trading With the Enemy Act of 1914 (4 and 5 Geo. 5), although it provided for an inspector and a controller it did not provide for the appointment of a custodian of alien property. However, the Trading With the Enemy Amendment Act of 1914 (5 Geo. 5),<sup>55</sup> provided for a custodian of enemy property, and the Trading With the Enemy Amendment Act of 1916 provided further for the vesting of such alien enemy property in the custodian<sup>56</sup> and extended the provisions to the Amendment Act of 1914.<sup>57</sup>

Provision is made in the Trading With the Enemy Amendment Act of 1914 for creditors to secure payment or part payment of debts or judgment debts against such alien enemy and in favor of such creditors.<sup>58</sup>

The English Trading With the Enemy Act of 1914 and the Amendment Acts of 1914, 1915 and 1916, were enacted primarily because "it is expedient to make further provision for preventing the payment of money to persons and bodies of persons resident or carrying on business in any country with which

<sup>54</sup> Trading with the Enemy Amendment Act (1916), 1(2), (5 and 6 Geo. 5, ch. 105-1[2]).

<sup>55</sup> Statutes 5 Geo. 5, ch. 12.

<sup>56</sup> Statutes 5 and 6 Geo. 5, ch. 105-4(1)

<sup>57</sup> Statutes 5 and 6 Geo. 5, ch. 105-16.

<sup>58</sup> Trading with the Enemy Amendment Act (1914), 5(2).

His Majesty is for the time being at war \* \* \* in contravention of the law relating to trading with the enemy, and for preserving with a view to arrangements to be made at the conclusion of peace, such money and certain other property belonging to enemies.’’<sup>59</sup>

The payment to their creditors of the debts of enemies out of such money and property is not mentioned or even referred to in the first English Trading With the Enemy Act. These creditors occupy a secondary position<sup>60</sup> under the act as is shown by the provisions<sup>61</sup> of sec. 5, which prescribe the manner in which enemy property vested in the custodian under sec. 4 shall be held and dealt with by him.<sup>62</sup>

**§ 1275. English Trading With the Enemy Act (cited).**

**(a) Trading With the Enemy Act of 1914.** Being Act of September 18, 1914; Statutes 4 and 5 George 5, cap. 87.

**(b) Trading With the Enemy Amendment Act of 1914.** Being Act of November 27, 1914; Statutes 5 George 5, cap. 12.

**(c) Trading With the Enemy Amendment Act of 1915.** Being Act of July 29, 1915; Statutes 5 and 6 George 5, cap. 79.

**(d) Trading With the Enemy (Extension of Powers) Act of 1915.** Being Act of December 23, 1915; Statutes 5 and 6 George 5, cap. 98.

**(e) Trading With the Enemy Amendment Act of 1916.** Being Act of January 27, 1916; Statutes 5 and 6 George 5, cap. 105.

**(f) Trading With the Enemy (Copyright) Act of 1916.** Being Act of August 10, 1916; Statutes 6 and 7 George 5, cap. 32.

**(g) Trading With the Enemy and Export of Prohibited Goods Act of 1916.** Being Act of December 18, 1916; Statutes 6 and 7 George 5, cap. 53.

<sup>59</sup> Preamble of The Trading with the Enemy Act of 1914 ( ).

<sup>60</sup> Fried - Krupp Aktien - Gesellschaft, In re (1916), 2 Ch. 194, at 198.

<sup>61</sup> Trading with the Enemy Act (1916), 4.

<sup>62</sup> Trading with the Enemy Act (1916), 5.





# PREFATORY NOTE

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## FORMS

The forms in the following pages are what may be termed practical forms. They are in most cases the pleadings filed, entered and acted upon in actual cases. They indicate in detail the pleadings which have successfully accomplished the ends sought for by the practitioner.

It is not to be expected that these forms can be used without change but it is believed that precedents in pleadings may be found herein covering the subjects which generally present themselves in receivership cases. Such precedents are full of valuable suggestions and help the busy lawyer to get into his pleadings points which he might through inadvertence otherwise omit.



# CHAPTER XXXVIII

## FORMS

### ANALYSIS

#### FORMS OF COMPLAINTS AND PETITIONS PRAYING APPOINTMENT OF RECEIVER

NO.

1. Petition of Surety for Receiver.
2. Petition of Partner for Receiver of Partnership.
3. Petition by Stockholder for Receiver of Manufacturing Company.
4. Complaint by Noteholder for Receiver of Manufacturing Company (Statutory Receivership).
5. Complaint by Stockholder and Creditor for Receiver of Hotel.
6. Complaint by Shareholder for Receiver for Savings Bank and Loan Association.
7. Petition by Shareholder and Creditor for Receiver of Traction Company.
8. Complaint by Trustee of Bondholders for Receiver of Irrigating Company.
9. Complaint by Trustee of Bondholders for Receiver of Light and Power Company.
10. Petition by Trustee of Bondholders for Receiver of Building Company.
11. Complaint by Trustee of Bondholders for Receiver of Railway Company.
12. Complaint by Trustee of Bondholders for Receiver of Railway Company (Another Form).
13. Complaint by Noteholder for Receiver of Railway Company.
14. Complaint by Supply Dealer for Receiver of Railway Company.
15. Petition by Member for Receiver for Country Club.
16. Ex Parte Petition of Director for Dissolution of Corporation and Receiver.

#### FORMS OF ANSWERS TO COMPLAINTS AND PETITIONS

17. Answers of Manufacturing Company Admitting Acts Complaind of.
18. Joint and Several Answer of Light Company, etc., to Complaint.
19. Answer of Railway Company Admitting Allegations of Complaint.
20. Answer of Railway to Bill of Complaint (Another Form).
21. Answer of Trustee of Mortgage to Complaint Against Railway.
22. Answer of Traction Company Joining in Prayer for Receiver.

## FORMS OF ORDERS APPOINTING RECEIVERS

NO.

23. Order Appointing Temporary Receiver of Partnership (Michigan Form).
24. Order Appointing Permanent Receiver of Partnership (Michigan Form).
25. Order Appointing Receiver of Law Partnership.
26. Order Appointing Receiver of Traction Company.
27. Order Appointing Receiver of Traction Company (Another Form).
28. Order Appointing Receiver of Hotel Company.
29. Order Appointing Receiver of Irrigating Company.
30. Supplemental Order of Final Appointment of Receiver of Irrigating Company.
31. Order Appointing Receiver of Manufacturing Company.
32. Decree of Equitable Relief and Appointment of Receiver of Manufacturing Company.
33. Order Appointing Receiver of Railway Company.
34. Order Appointing Receiver of Railway Company (Another Form).
35. Supplemental Order Appointing Receiver of Railway.
36. Order Appointing Temporary Receiver of Railway Company.

## FORMS OF MOTIONS

37. Motion for Appointment of Receiver.
38. Motion to Vacate or Revoke Appointment of Receiver.
39. Motion to Reclaim Property in Possession of Receiver.
40. Motion to Confirm Accounts and Discharge Receiver.

## FORMS OF APPLICATIONS BY RECEIVER

41. Application of Receiver for Authority to Purchase Equipment.
42. Applications for Receiver's and Attorney's Fees.
43. Application by Receiver for Fees.
44. Application by Receiver for Additional Powers.
45. Application by Receiver to Borrow Money and Issue Promissory Notes.
46. Application by Receiver to Borrow Money and Pledge Accounts.
47. Application by Receiver for Order Allowing Delayed Claims.
48. Application by Receiver for Confirmation of Accounts and Discharge.

## FORMS OF PETITIONS BY RECEIVER

49. Petition of Receiver for Further Instructions.
50. Petition of Receiver for Order of Court for Presentation of Claims.
51. Petition of Receiver Rejecting Claims.

## FORMS OF ORDERS AND ENTRIES

NO.

52. Order Defining Powers of Receiver and Granting Additional Powers.
53. Order Authorizing Payment of Appraisers' Fees.
54. Order Appointing Appraisers.
55. Order with Respect to Claims.
56. Order Authorizing Receiver to Pay Taxes.
57. Order Authorizing Receiver to Repair Property.
58. Order with Respect to Claims Against Receiver's Operation.
59. Order Ordering Property Reinsured.
60. Order Extending Receivership.
61. Order Extending Receivership (Another Form).
62. Order Consolidating Causes.
63. Orders Authorizing Receiver to Employ Counsel.
64. Order Granting Motion to Reclaim Property in Possession of Receivers.
65. Order Approving Bonds of Receivers.
66. Order Approving Bonds of Receivers (Another Form).
67. Order Allowing Claim.
68. Order Granting Leave to Mortgagee to Foreclose.
69. Order Confirming Accounts and Discharging Receiver.

## SUNDRY RECEIVERSHIP FORMS

70. Receiver's Oath.
71. Receiver's Bond.
72. Receiver's Bond (Another Form).
73. Oath of Sureties Attached to Bond.
74. Consent of Surety on Receiver's Bond to Extension of Receivership and Consolidation of Causes.
75. Acceptance of Appointment by Receiver, a Trust Company.
76. Receiver's Letter to Creditors of Partnership.
77. Notice to Holders of Unsecured Claims.
78. Receiver's Published Notice to Creditor.
79. Receiver's Summary of Assets and Liabilities.
80. Receiver's Account.
81. Receiver's Partial Report.
82. Receiver's Report of Operation of Irrigating Company.
83. Receivers of Railway—Monthly Account.
84. Reorganization of Railway—Plan of Agreement.
85. Reorganization of Railway—Plan of Agreement (Another Form).
- 85a. Decree Ordering Stock Assessment and Receiver to Collect Same.

## FORMS OF ATTACHMENTS AND GARNISHMENTS

86. Order Appointing Commissioner to Hear Garnishments.
87. Notice to Creditors to Present Claims to Commissioner.
88. Notice to Debtor by Receiver's Paymaster.
89. Publication of Notice of Attachment.

## FORMS IN CONTEMPT PROCEEDINGS

No.

90. Motion of Receiver for Rule in Contempt.
91. Entry Allowing Rule in Contempt.
92. Rule in Contempt Proceedings.
93. Order Dismissing Contempt Proceedings.

## FORMS IN SUITS AGAINST RECEIVERS

94. Leave of Court to Sue Receiver.
95. Petition by Employe for Damages Against Receiver.
96. Summons Against Receiver.
97. Answer of Receiver in Personal Injury Suit.
98. Reply by Plaintiff in Suit Against Receiver.
99. Charge of Court in Suit Against Receiver.

## FORMS IN INTERVENTION PROCEEDINGS

100. Motion to File Intervening Petition.
101. Order Allowing Intervention.
102. Intervening Petition of Receivers of Railway in Foreclosure Suit.
103. Order on Intervening Petition in Foreclosure Suit.
104. Intervening Petition of Noteholder.
105. Order Allowing Intervention to Be Filed.
106. Order Directing Decree in Favor of Intervenor.
107. Petition by Trustee of Mortgagee to Foreclose in Receivership.

## FORMS IN SALES BY SPECIAL MASTER

108. Final Decree Authorizing Sale of Property.
109. Advertisement of Sale by Special Master.
110. Special Master's Report of Sale.
111. Petition for Confirmation of Sale by Special Master.
112. Notice of Motion for Confirmation of Sale.
113. Order Confirming Sale by Special Master.
114. Notice of Purchaser's Election Not to Accept Certain Property.
115. Notice of Payment of Proceeds of Foreclosure Sale.
116. Receipt and Release by Bondholder or Mortgagee.
117. Special Master's Deed of Railway.

## FORMS IN RECEIVERS' SALES

118. Application of Receiver to Sell Personalty.
119. Application of Receiver to Sell Real Estate.
120. Application of Receiver for Authority to Sell Real Estate (Another Form).
121. Notice of Motion for Order of Sale.
122. Motion to Make Mortgagee Party Defendant.

NO.

123. Entry Making Mortgagee Party Defendant.
124. Answer of Mortgagee Setting Up Interest.
125. Entry Appointing Appraisers of Real Estate.
126. Appraisement of Real Estate and Personalty.
127. Confirmation of Appraisement and Order of Sale of Real Estate.
128. Order of Sale of Property (Another Form).
129. Order of Court to Sell Personal Property.
130. Advertisement of Receiver's Sale—Real Estate and Personalty.
131. Legal Notice of Receiver's Sale—Real Estate (Another Form).
132. Order Employing Auctioneer.
133. Receiver's Report of Sale of Real Estate.
134. Receiver's Report of Sale of Real Estate (Another Form).
135. Entry Confirming Sale of Real Estate.
136. Assignment of Bid at Receiver's Sale.
137. Receiver's Deed to Real Estate.

## FORMS IN BANKRUPTCY RECEIVERSHIPS

138. Petition for Involuntary Bankruptcy—Contracting Company.
139. Petition for Involuntary Bankruptcy—Manufacturing Company.
140. Adjudication in Bankruptcy.
141. Adjudication in Bankruptcy (Another Form).
142. Admission and Consent to Be Adjudicated a Bankrupt.
143. Petition for Order Appointing a Receiver in Bankruptcy.
144. Affidavit in Support of Petition for Receiver in Bankruptcy.
145. Consent of Alleged Bankrupt to Appointment of Receiver.
146. Order Appointing Receiver in Bankruptcy—Contracting Company.
147. Order Appointing Receiver in Bankruptcy—Manufacturing Company.
148. Order Appointing Receiver in Bankruptcy—Dairy.
149. Report of Receiver in Bankruptcy.
150. Advertisement of Bankruptcy Receiver's Sale of Business.
151. Order Allowing and Approving Receiver's Final Report and Account, and Discharging Receiver.
152. Receiver in Bankruptcy—Application for Fees.
153. Order of Reference in Bankruptcy.
154. Appointment and Qualification of Trustee in Bankruptcy.
155. Application of Trustee for the Sale of Real and Personal Property.
156. Answer of Mortgagee to Trustee's Petition to Sell Real Estate.
157. Appointment of Appraisers of Real and Personal Property.
158. Appraisement of Real and Personal Property.
159. Order of Sale by Trustee in Bankruptcy.
160. Advertisement of Sale of Real Estate.
161. Trustee's Report of Sale of Personal Property.
162. Trustee's Report of Sale of Real Estate.
163. Trustee's Second Report of Sale of Real Estate.



NO.

- 164. Confirmation of Sale of Real Estate.
- 165. Entry Allowing Fees to Trustee.
- 166. Final Account of Trustee in Bankruptcy.
- 167. Entry Ordering Payment to Mortgagee.
- 168. Entry Ordering Payment to Mortgagee (Another Form).
- 169. Deed of Trustee in Bankruptcy.
- 170. Intervening Petition in Bankruptcy Proceedings.
- 171. Answer of Trustee in Bankruptcy to Intervening Petition.
- 172. Reply of Intervenor in Bankruptcy Proceedings.

#### FORMS RELATING TO RECEIVERS' CERTIFICATES

- 173. Report and Petition of Receiver of Irrigating Plant for Receivers' Certificates.
- 174. Petition of Receivers to Issue Receivers' Certificates for Additions and Improvements.
- 175. Petition of Receivers for Authority to Purchase and Issue Receivers' Certificates.
- 176. Entry Authorizing Hearing on Petition to Issue Receivers' Certificates.
- 177. Order Authorizing and Directing Receiver to Borrow Money.
- 178. Order Authorizing Receiver to Borrow Money (Another Form).
- 179. Order Authorizing Receiver to Borrow Money and Issue Receiver's Certificates.
- 180. Order Authorizing Receiver's Certificates for Irrigating Plant.
- 181. Order Authorizing Receivers' Certificates for Railway Conditionally.
- 182. Application to Renew Receivers' Certificates.
- 183. Entry Authorizing Renewals of Receivers' Certificates.
- 184. Consent by Mortgagee or Bondholders to Issue of Receivers' Certificates.
- 185. Receiver's Certificate.
- 186. Petition by Intervenor Objecting to Issue of Receivers' Certificates.

#### FORMS IN APPEALS FROM APPOINTMENT OF RECEIVER

- 187. Petition for Appeal from Final Decree and Appointment of Receiver.
- 188. Assignment of Errors.
- 189. Order Allowing Appeal.
- 190. Bond on Appeal.
- 191. Citation.

## FORMS OF COMPLAINTS AND PETITIONS PRAYING APPOINTMENT OF RECEIVER

**Form No. 1****Petition of Surety for Receiver**

(Form under Civil Code Procedure)

A B, Plaintiff,

vs.

The C D Company, Defendant

*Petition\**

Now comes the plaintiff and states to the court,

That the defendant, The C D Company, is a corporation duly incorporated under the laws of Ohio.

That the defendant company is conducting, operating and carrying on the business of manufacturing and selling shoes with its factory, office and place of business at —— Street in the City of ——, County of ——, State of Ohio.

That for the purpose of conducting and carrying on its business aforesaid, the defendant company did purchase and now owns a large amount of machinery, steam-engine boilers, sewing machines, tools and implements, and did also erect its factory or building wherein to operate said machinery upon certain real estate which it purchased and now owns for such purpose, to wit [*describe real estate*].

That the defendant company now owns and holds a large amount of accounts, claims and demands against various persons and corporations in the City of ——, County of ——, Ohio and elsewhere, due to it for shoes, manufactured, sold and delivered.

That there is also due to the defendant company unpaid subscriptions to its capital stock from various persons.

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\* Substance of the above taken from *Barbour v. National Ex. Bank*, 45 O. S. 133, 12 N. E. 5.

That in the transaction of the business of the company and for the purpose of raising the means necessary to conduct and operate its machinery and business, A B the plaintiff herein became and now is surety for the defendant company in a large amount which is now due and payable, to wit [*describing indebtedness*].

That A B the plaintiff has no security whatever for his liability as surety and he is surety of the defendant company without any consideration whatever.

That the defendant company is now indebted to other creditors in considerable amounts, the exact number of creditors and the names of which persons as well as the respective amounts due each, the plaintiff is unable now to state.

That the defendant company is not making any effort to pay off or discharge the debts upon which A B the plaintiff is surety as aforesaid.

That the assets and property of the defendant company above mentioned, and of whatever kind and description, would be entirely insufficient to pay off and discharge its debts and liabilities, that the defendant company is insolvent and its business can not be continued without loss and the wasting of its assets.

That it is necessary to sell all the property of whatever consisting, real, personal and mixed of the defendant company and to collect all its accounts, claims and demands and its unpaid stock subscriptions in order to meet its liabilities and pay off and discharge its debts.

That unless the relief herein sought is granted, great and irreparable damage will be done to A B, the plaintiff.

That plaintiff has no adequate remedy at law to obtain the relief herein prayed.

Wherefore A B the plaintiff prays that the defendant company be compelled to pay off and discharge the notes and obligations upon which A B plaintiff is surety, as above set forth, and save him A B from payment thereof.

That a receiver be appointed to take charge of and control of the property, real and personal, and of all the assets of the

company and convert the same into money as speedily as possible, to collect all the claims and demands due to it, and to collect the unpaid subscriptions to the capital stock.

That the real estate, factory fixtures and all personal property belonging to the defendant company be sold by order of the court and according to law.

That the money so collected, and the proceeds of the sale of the real estate and personal property be paid to all the creditors of the company in proportion to their debts and claims against it.

And plaintiff prays for such other or further relief as might be proper in the premises.

\_\_\_\_\_,  
Attorney for Plaintiff.

State of \_\_\_\_\_, County of \_\_\_\_\_, ss.:

A B being first duly sworn, says that he is the plaintiff in the above entitled action and the facts set forth in the above petition are true.\*

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
19\_\_\_\_.

[SEAL]

Notary Public \_\_\_\_\_ County, \_\_\_\_\_ Ohio.

## Form No. 2

### Petition of Partner for Receiver of Partnership

(Form under Civil Code Procedure)

A B, Plaintiff,

vs.

C. D, Defendant.

#### *Petition*†

Plaintiff states that on \_\_\_\_\_ in the year \_\_\_\_\_ he entered into a partnership with C D by a contract for an indefinite

\* If an injunction or receivership is predicated upon a petition, such petition must be sworn to positively unless additional affidavits or sworn testimony is produced in court.

† Substance of above petition taken from McGrath v. Cowen, 57 O. S. 385, 49 N. E. 338.

period of time under the name of A B & C D, in the city of ——— for the purpose of conducting the business of wholesale dealers in boots and shoes, on consignment and on commission and also for the purpose of conducting in their own right the business of selling boots and shoes at retail in said city.

Plaintiff states that he and the defendant C D under said contract did conduct a partnership business and are still conducting such partnership business at the places hereinafter mentiond in said city of ———.

Plaintiff states that the said business now carried on by A B & C D consists of a wholesale establishment at No. ——— Street, in said City of ———, for the sale of boots and shoes on commission, which merchandise has been consigned to said partnership by manufacturers and dealers located in Massachusetts and other eastern states, and elsewhere, and that said partnership has a stock of goods and merchandise now on hand belonging to said consignors, and also certain outstanding accounts representing sales from such consigned goods, which may belong to consignors.

That the other businesses conducted by said partnership are two retail stores in the City of ———, one at ——— Street, and the other at ——— Street, which stores contain goods and merchandise sold to said firm absolutely, and from which stores the said partnership are prosecuting sales of boots and shoes at retail.

Plaintiff further states that the said partnership doing business at all the places as above alleged is insolvent and is unable to meet its obligations, either for the goods held on consignment or for the goods purchased for said retail stores, that some of the debts owing by said partnership are past due, and they are unable to pay the same; that mortgages have been executed by said firm to various creditors to secure their claims against said partnership upon the stock in said retail stores, and that the said mortgagees are now in possession thereof, with power to sell, that there is a large equity in said property covered by said mortgages which should be preserved for the benefit of the

.

creditors of said partnership and which may be seized by legal process and may be jeopardized unless a receiver be appointed to take charge of and possession thereof for the benefit of creditors, and the property in said wholesale store and accounts arising therefrom belonging to consignors will be jeopardized unless the same be preserved by a receiver to be appointed by the court who shall take possession thereof for whom it may concern;

That suits are threatened against said partnership, and there is a conflict between said mortgagees as to their priorities and said mortgagees threaten to sell said property, and the same will thus be sacrificed unless sold by a receiver to be appointed by this court.

Plaintiff states that he heretofore demanded of the defendant, a dissolution of said partnership, which the defendant refused and now refuses, and plaintiff now demands as of right a dissolution hereof; that he has never been able upon his demands for dissolution to agree with the defendant upon the terms thereof, or to secure his assent or concurrence thereto, and can not now agree with him thereon; that he has heretofore demanded of the defendant to join with him in an assignment for the benefit of creditors, by said partnership, of all the property which he refused and still refuses.

That the rights and interests of the plaintiff and of all the creditors of said firm, and the right of the consignors and owners of the goods and accounts in said wholesale store will be endangered and sacrificed unless all the property belonging to said firm be placed in the possession of a receiver to be appointed by this court.

That the plaintiff is entitled to have said firm dissolved and its property appropriated to the payment of its debts.

Wherefore plaintiff prays that said partnership be dissolved by the order of this court, and that a receiver be appointed by this court to take charge and possession of all the property, rights and credits of said partnership and to sell the same under the orders of this court, and apply the proceeds as the court

may order and for all other and proper relief to which he is entitled in equity.

\_\_\_\_\_,  
Attorney for Plaintiff.

State of \_\_\_\_\_, County of \_\_\_\_\_, ss.:

A B being first duly sworn, says that he is the plaintiff in the above entitled action and the facts set forth in the above petition are true.

\_\_\_\_\_.  
Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
19—.

\_\_\_\_\_.  
[SEAL] Notary Public, \_\_\_\_\_ County, State of \_\_\_\_\_.

### Form No. 3

#### Petition by Stockholder for Receiver of Manufacturing Company

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 21. IN EQUITY

Francis H. Williamson, Plaintiff,  
vs.

Justus Collins, Eugene Zimmerman, George R. Collins and The  
Superior Portland Cement Company, a Corporation, etc.,  
Defendants.

The plaintiff, Frances H. Williamson, was at all of the times hereinafter mentioned, ever since has been, and is a citizen of the State of Kentucky and of no other state, residing at Catlettsburg, in said state.

The defendant, The Superior Portland Cement Company, was at all such times and is a corporation organized and exist-

ing under the laws of the State of Ohio, and of no other state, and having its general or executive offices and sales department in Cincinnati, in said state, and having works at Superior, Ohio, likewise in the Southern District of Ohio, and Western Division thereof.

The defendant, Eugene Zimmerman, was at all such times and is a citizen of the State of Ohio, or of Michigan, and of no other state, and the defendants, Justus Collins and George R. Collins, were at all such times and are citizens of the State of West Virginia, and of no other state.

The amount in controversy herein, exclusive of interest and costs, exceeds the sum or value of three thousand dollars.

The plaintiff says that she was a stockholder in the above company at the time of all the transactions of which she now complains, and still is, owning one hundred shares of the common capital stock of said company of the par value of one hundred dollars each. This suit is not a collusive one to confer on a court of the United States jurisdiction of a case of which it would not otherwise have cognizance and is one to remove an incumbrance or cloud upon the title to real and personal property within this district.

The plaintiff says that she brings this suit not alone on her own behalf, but in behalf of all stockholders of said company who may care to come in and take the advantage of this suit, and also on behalf of said corporation itself.

The capital stock of said corporation consists of fifty-five hundred shares of common capital stock, par value of one hundred dollars each, which alone has voting power, and five hundred shares, par value of one hundred dollars each, preferred stock. The directors of said company are five in number, comprising, as a majority and in control of said board of directors the above named persons defendants. The other two directors are D. G. Wright and H. A. Marting, of Ironton, Ohio.

The defendant, Justus Collins, owns two thousand six hundred and sixty-nine shares of said common capital stock; the defendant, George R. Collins, who is the son of Justus Collins, owns



forty-two of such shares; and the wife of said Justus Collins owns one hundred and five shares of said stock. Such stock ownership of the Collins family constitutes more than a majority of said stock. The defendant, Zimmerman, owns three hundred and twenty-five of such shares. A son-in-law of said defendant, Justus Collins, owns fifty shares of said common capital stock, and said Collins controls the voting power of at least one hundred additional shares, belonging to friends or business associates of said Collins, so that said Collins has been and is in absolute and arbitrary control of said corporation since its formation in the year nineteen hundred and six.

Plaintiff says that the defendant company has valuable plants and buildings for the manufacture of cement at Superior, Lawrence County, Ohio, and at Bartles, Lawrence County, Ohio, and that said business can be and has been operated at a substantial profit. The approximate net earnings, exclusive of the interest charges on the bonds hereinafter described for the past seven months have been seventy-three thousand (\$73,000) dollars. Such earnings for each of the months of April, May and June have been in excess of five thousand (\$5,000) dollars, and for each of the months July, August, September and October in excess of ten thousand (\$10,000) dollars.

Plaintiff says that The Provident Savings Bank & Trust Company of Cincinnati, Ohio, has acted as the banker for said company and that on January 1, 1913, the company owed said bank approximately one hundred and fifteen thousand (\$115,000) dollars. To secure said indebtedness the defendants, Justus Collins, Eugene Zimmerman and M. L. Sternberger, deceased, had endorsed a note of said company or guaranteed its indebtedness up to sixty thousand (\$60,000) dollars to said bank and defendant Collins had pledged as further security to said bank certain first mortgage bonds of defendant company and certain other securities belonging to him.

The bonds thus pledged by Collins were part of an issue of five hundred and twenty thousand (\$520,000) dollars of first mortgage five per cent. gold bonds dated July 1, 1906, and

due twenty years after date with coupons attached for semi-annual interest payable January and July. Said bonds were and are secured by deed of trust to The Provident Savings Bank and Trust Company as trustee duly recorded covering the company's plant above described. The deed of trust securing said bonds provides in substance that default of interest shall not mature the principal sum or warrant foreclosure therefor unless a majority of the bondholders request the trustee to foreclose, and six months shall elapse after such default. No such request has been made by a majority of bondholders, or by any bondholder, of said trustee.

On or about the 19th of September, 1913, Justus Collins, without the knowledge of any of the other directors (with the possible exception of Zimmerman and George Collins, concerning whose knowledge or ignorance of the transaction the plaintiff has no information) made a written proposal to the Commercial Credit & Investment Company a Missouri corporation, to assign to it certain accounts of the defendant company, and on or about October 1, 1913, the said company accepted said proposal and made a contract in substance as follows:

To charge one per cent. of the face of said accounts paid within thirty days and an additional one per cent. of the face for each additional thirty days or portion thereof before payment and to pay cash eighty per cent. of the face value less said charges, and to pay the balance of the twenty per cent. less deductions as aforesaid, when all of said accounts assigned should have been paid in full, and if not paid in full to withhold said twenty per cent. and continue to make deductions until paid. Said contract obligated the company to turn over to said credit company checks and remittances as received and permit said company to collect the same. The company ordinarily sells only to solvent purchasers, its terms being one per cent., ten days, cash, thirty days.

Since making said contract said Collins has turned over to said company upwards of seventy thousand (\$70,000) dollars face value of good accounts belonging to said defendant com-

pany, and will continue to do so with large additional accounts unless enjoined.

The purpose of making said contract by said Collins, without consultation or knowledge of the board of directors, was to use the proceeds of said accounts to discharge the note or account to the Provident Bank, on which he was endorser or guarantor, and for which he had individual securities pledged, and to rid himself of said endorsement and regain his securities.

At a stockholders and directors meeting of the company early in the year nineteen hundred and thirteen, Justus Collins had announced to the stockholders that he had made satisfactory arrangements with the bank for financing the company, provided said company would pay to said bank twenty-five hundred dollars a month for the months of March and April, and five thousand dollars a month thereafter, towards reduction of the indebtedness of one hundred and fifteen thousand dollars to said bank, and such statement made by him was true.

The matter of transferring the accounts to said credit company was first presented to the directors meeting on October 14, 1913. At such meeting Justus Collins gave a statement to the directors showing quick assets in excess of one hundred and ninety-six thousand dollars, and debts of one hundred and fifty-one thousand dollars, said quick assets consisting of cash in bank, accounts and bills receivable, and merchandise as shown by an inventory of cement, supplies, etc. Justus Collins also stated at said meeting that the Provident Bank had not called the loan and that abundant credit could be obtained from said bank, since payment had been made to it largely in excess of the monthly amounts demanded under the agreement made and reported early in January, 1913.

At the directors meeting of October 14, 1913, D. G. Wright objected to the contract made with the credit company, of which he, and director Marting, then learned for the first time, and demanded that a special stockholders meeting be called for the purpose of acquainting the stockholders with what had

been done. At said meeting of October 14, 1913, Justus Collins reported that the company was solvent and making substantial profits from its operations.

In accordance with the demand of director Wright, a special meeting of the stockholders and directors was called for October 31, 1913, for the purpose of considering the financial status of the company, and taking action on the contract made by the president assigning the accounts of the company to said credit company.

Upon the assembling of the directors meeting, at which meeting director Marting was absent, having no idea that the business brought before said meeting was to be brought before it, the defendant Zimmerman presented a resolution authorizing the signing of a deed of assignment of the company's property by the vice-president and secretary to the president, which was seconded by George R. Collins, who moved the question. Justus Collins permitted no opportunity for debate or discussion, and said resolution was declared to be carried by the vote of Justus and George Collins, and Zimmerman, director Wright voting in opposition. The stockholders meeting was then called, and the same resolution was presented. The plaintiff objected to the consideration of said resolution, or action thereon, on the grounds, among others, that there was no necessity for such action, that the company was solvent, that it would be a serious injury to the credit and standing of the company to take such action, and that there had been no proper notice of such intended action, either to directors or stockholders for the special meeting at which it was taken. Other stockholders urged the inadvisability of such precipitate, unnecessary and injurious action, several of the stockholders, being persons of substantial financial responsibility, offering to advance such amount of money as might be necessary to prevent such action and for the proper conduct of the company's business, and urged at least a brief postponement to see if less drastic action could not be taken; but Justus Collins, after permitting only the briefest argument and objection, arbitrarily refused, put the

question, declared same carried, and thereupon declared the meeting adjourned, notwithstanding that of the eleven stockholders present, holding proxies for substantially all of the stock of the company, only George and Justus Collins, and Zimmerman, voted in favor of said action, and eight stockholders owning more than thirteen hundred and fifty shares in person, and having proxies for a large number of shares in addition, voted in opposition to such action and adjournment.

Previous to the introduction of the resolution, the plaintiff had no knowledge or means of knowing of the intention to make any deed of assignment, and had every reason to believe that the company was solvent and extremely prosperous, and the same was true of every other stockholder and director except such as were under the control of Justus Collins, including George Collins and Zimmerman, although the latter announced at the meeting that he knew nothing of the resolution previous to its being introduced.

Justus Collins had legal counsel with him at the meeting and the resolutions for the directors and stockholders, and also the deed of assignment and letters to creditors had been carefully prepared ready for instant action and had been agreed upon by said majority of directors owning a majority in amount of stock controlled by Justus Collins before the meeting. The deed of assignment was at once filed in the Insolvency Court of Hamilton County, Ohio, and letters immediately sent out to creditors, signed by Justus Collins as assignee, stating in substance, that the company was solvent and that the action was taken to get rid of and have cancelled the outstanding bonds on the alleged ground that the same had been given as a bonus to stockholders on subscribing for their stock and were illegal, and further requesting creditors to file their claims with him as assignee and consent in writing to the continuance of the business by him as assignee. A similar statement was made by said Collins and his attorney in the public press of Cincinnati. Said Collins claims to be acting as assignee and will continue so to act unless enjoined by order of this court. Accompany-

ing and attached to said deed of assignment, is a written statement by said Collins showing assets about eighty thousand (\$80,000) dollars and liabilities to general creditors, exclusive of bonds, seventy-eight thousand (\$78,000) dollars, and referring to an inventory of October 29, 1913, which inventory was at no time exhibited to the directors or stockholders of the company and is not attached to said deed of assignment. Said Collins has involved the company in a large expense for a bond in connection with said assignment in the penal sum of one hundred and sixty thousand (\$160,000) dollars which he has filed in said Insolvency Court under number 4048, notwithstanding the articles of incorporation of defendant company make the residence of said company in Jackson in Jackson County, Ohio, and such certificate has not been changed or amended in said respect.

Plaintiff says that at the time of filing said deed of assignment and prior and subsequent thereto the defendant company was solvent, having a large and prosperous business operating at a profit, and credit and the means of raising money, if properly attempted, and if there was any want of ready money, it was solely because of the sale of said accounts under a contract withholding twenty per cent. of the face thereof, and by reason of said Justus Collins having paid to the Provident Bank, during the month of October, for the purpose of releasing himself from personal liability and of regaining his pledged securities, a sum approximating forty thousand dollars in the first half of said month, and approximating thirty thousand dollars additional in the last half of said month of October, without paying the merchandise creditors of the company in the ordinary course of trade, on whose indebtedness he was not an endorser, or otherwise individually responsible.

Plaintiff further says that at the time of the issuing of the fifty thousand dollars of preferred stock, said preferred stock was sold at par and one share of common stock given as a bonus for each two shares of preferred stock subscribed for. Said Collins and his family and associates own a large majority

of said preferred stock, and there are other solvent holders of the same, but the company has never made a call for payment of the whole or any part of the twenty-five thousand dollars of common stock issued as a bonus to the holders of the preferred stock.

A large majority of the bonds above referred to are in the hands of the original holders thereof, and if, as claimed by said Collins, there are any equities against the use of said bonds, or some of them, the same could be asserted if said bondholders undertook to enforce payment of interest, but, in fact, said bonds have been outstanding for more than seven years, and not to exceed three thousand (\$3,000) dollars in coupons of said bonds have been presented during all of said time, and not to exceed two thousand (\$2,000) dollars has ever been paid upon coupons presented. Said Justus and George Collins, and Zimmerman, knew all of the foregoing when they agreed upon and carried out the actions above complained of.

Plaintiff says that filing of said deed of assignment and the attempt of Justus Collins to act thereunder, are illegal, fraudulent, and void, for the following, among other reasons, namely: (1) The company was not insolvent when the deed was made; (2) the deed was made without legal authority, inasmuch as a majority of the directors had agreed upon the same before and outside of the directors meeting, without the knowledge of the other directors; (3) there was no proper notice to the directors or stockholders of intention to bring such extraordinary business before the special meetings and said meetings professed to be called for the purpose of considering the sale of accounts to said credit company; (4) Justus Collins has professed to deal with the property of the company and has attempted to involve it in expenditures without authority and without having filed bond in the county of the residence of the corporation; and (5) the purpose of said proceedings is not to benefit the company, but to use the power of the majority controlled by Collins, in his own interest, and to injure the company and

its credit and to destroy the value of plaintiff's and others' stock and bonds.

Ever since the formation of the company, Justus Collins has acted arbitrarily and unreasonably and without consultation with, and in disregard of, the directors and stockholders not connected with him by family or business relations, refused one of the stockholders his proportion of bonds, and required him to bring suit therefor against the company, involving said company in needless expense, and requested the resignation of the director who opposed him in such matter. For a period of about three years he refused to have directors meetings at all, and when sought for consultation on matters affecting the interest of the company by stockholders, has refused to give them consideration or ordinary civility. Notwithstanding that the plants of the company are located in Lawrence County, said Collins insists on maintaining offices in Cincinnati, in connection with a coal business in which he is largely interested and gives but little attention to the affairs of the defendant company, of which he is president.

The plaintiff is unable to obtain any relief from the majority of the directors owning and controlling a majority of the stock of the company, and if demand were made upon them to bring this action, it would be, in effect, asking them to bring suit against themselves, as the actions taken by them, of which complaint is made, are for their personal advantage. Plaintiff says that in addition to protesting, as aforesaid, against the actions taken, she has come to Cincinnati to attend a meeting of the minority stockholders, to see what, if anything, could be accomplished without the necessity of court proceedings, and that a committee of the minority stockholders has conferred with said Justus Collins in an effort to have said unlawful acts vacated, but has failed in such attempt.

Plaintiff says further that the filing and continued existence of said void deed of assignment is a continued menace to the credit of the company, and will, unless ordered vacated, wreck



the company, and destroy the plaintiff's and other stockholders' rights and the value of their stock and bonds.

The plaintiff further says that said bonds are valid obligations of the defendant company, and it is for the interest of the corporation and its stockholders, that the status of said bonds should be determined in the hands of the various parties in which they may be found.

Wherefore, the plaintiff prays that a writ of subpoena issue to the defendants, requiring each to answer (but not under oath, the same being expressly waived) the allegations of this bill; that a temporary restraining order, or preliminary injunction issue against said Justus Collins, ordering him to desist from attempting to act as assignee under said void deed of assignment, or from attempting to carry out further said agreement with said Commercial Credit and Investment Company; that a receiver be appointed forthwith, to preserve the business and assets of the defendant corporation and to continue to operate the same for the benefit equally of all the stockholders of said corporation until the election of a proper board of directors; that the status of the bonds in the hands of the various holders thereof be determined in this action or otherwise; that Justus Collins be enjoined from taking any action tending to depreciate the value of said bonds or stock; that on final hearing said George and Justus Collins and Eugene Zimmerman, and each of them, be enjoined from acting oppressively or in their own interests at the expense of the minority stockholders of the defendant company; that said Justus Collins be perpetually enjoined from further acting under said void deed of assignment, or contract above complained of; and with George Collins and Zimmerman be ordered to cancel the same; that said Justus Collins and said George Collins and Eugene Zimmerman be ordered to account to said corporation, its creditors and all of its stockholders, for the loss and damage resulting to them of the aforesaid wrongful acts and to surrender whatever preference or advantage they

may have obtained by their said actions, and for such other and further relief as to the court shall seem meet and just.

Murray Seasongood,  
Solicitor for Plaintiff.

(Duly verified.)

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## Form No. 4

### Complaint by Note holder for Receiver of Manufacturing Company (Statutory Receivership)

(Delaware Statute)

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR  
THE DISTRICT OF DELAWARE. No. 260. IN EQUITY

Henry H. Hitner and Joseph G. Hitner, trading as Henry A.  
Hitner's Sons, Complainants,

vs.

The Diamond State Steel Company, a corporation of the State  
of Delaware, Defendant.

*To the Honorable the Judges of the Circuit Court of the United  
States for the District of Delaware:*

Henry A. Hitner and Joseph G. Hitner, trading as Henry A. Hitner's Sons, a co-partnership, bring this their Bill of Complaint, on behalf of themselves and all other creditors of The Diamond State Steel Company, the defendant herein, who may join herein and contribute to the expenses hereof, against the said The Diamond State Steel Company.

And humbly complaining, your orators show unto your honors as follows:

1. That the Diamond State Steel Company is a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of Delaware, and a citizen of the said State of Delaware. That your orators are citizens of the State of Pennsylvania, residing in the city and county of

Philadelphia in the said State of Pennsylvania. That the matter in dispute in this cause exceeds, exclusive of interest and costs, the sum or value of two thousand dollars (\$2,000).

2. That the said the Diamond State Steel Company, said defendant, is the owner of an extensive iron and steel plant located in the city of Wilmington, Delaware, on a tract of land of about sixty (60) acres, with wharves and trackage for the handling of material by rail and by water, which said plant is of great value; that said plant includes (1) a steel plant, consisting of five (5) fifty (50) ton open hearth furnaces with suitable soaking pits or heating furnaces, and a thirty-four inch blooming mill, all fully equipped with power outfit, cranes, shears, etc.; (2) finishing mills, consisting of seven trains of rolls, equipped and competent to roll all standard sizes of steel and iron bars of all merchantable descriptions, as well as plates; (3) a puddle iron department, consisting of a complete outfit of puddling furnaces and puddle mills for the production of puddle iron bars and billets; (4) a spike department, equipped with automatic and hand machines for the manufacture of railroad track, boat and wharf spikes; (5) a rivet department fitted with machinery for the manufacture of boiler, bridge, boat and tank rivets; (6) a track bolt department, equipped with machines for the manufacture of all sizes of railroad track bolts; (7) a machine bolt and nut department, equipped with numerous machines for the manufacture of machine bolts, rods and nuts; (8) a forge department, equipped with steam and hydraulic hammers, benders, furnaces, etc.; (9) a foundry department, fitted for the manufacture of iron castings for machine and mill use, buildings and bridge work; (10) a galvanizing department; (11) an extensive horse-shoe department; (12) a machine shop.

3. That upon said plant of said the Diamond State Steel Company is a large quantity of material, consisting of iron and steel scrap, iron and steel materials manufactured, in the process of manufacture, and unmanufactured, coal, minerals, chemicals, and material of all kinds for carrying on the

various departments of the business of said plant, and a large quantity of the manufactured products of said company consisting of horseshoes, bolts, nuts, rivets, bar iron and plates of various descriptions, which personal property mentioned in this section is of the value of upwards of one hundred and eighty thousand dollars (\$180,000) \* \* \*. That there are due to said defendant company many accounts and bills receivable, the total of which is unknown to your complainant.

4. That your orators, trading as Henry A. Hitner's Sons, are creditors of said defendant company in the sum of fifteen thousand and sixty-eight dollars and three cents (\$15,068.03), all of which indebtedness is now due and payable and is represented by five certain promissory notes as follows:

One dated April 2, A. D. 1904, payable August 2, A. D. 1904 for the sum of \$3,370.78.

One dated April 20, A. D. 1904, payable August 20, A. D. 1904, or the sum of \$3,313.56.

A third dated April 27, A. D. 1904, payable August 27, A. D. 1904, for the sum of \$3,313.56.

A fourth dated June 22, A. D. 1904, payable October 22, A. D. 1904, for the sum of \$1,259.05.

The fifth dated July 11, A. D. 1904, payable October 29, A. D. 1904, for the sum of \$3,811.08.

That all of said notes have been received by the said complainants, trading as aforesaid, for material furnished by them to the said The Diamond State Steel Company.

5. On information and belief these complainants further aver that said defendant company is indebted to upwards of one hundred and fifty other creditors of said company in various amounts, exceeding in the aggregate upwards of two hundred and seventy-five thousand dollars (\$275,000) \* \* \* all of which is now due and immediately payable.

6. That there are outstanding, corporate bonds of said company secured by a corporate mortgage upon said company's plant, in the sum of one million dollars, on which bonds the

semi-annual interest has been in default since the 1st day of November, A. D. 1904.

7. That in courts in the State of Pennsylvania and in the superior court of the State of Delaware in and for New Castle County, there are now pending numerous suits, brought by the creditors of said company against said defendant company, in three at least of which suits in the State of Pennsylvania judgment has been recovered.

8. That in the statutes of the State of Delaware, being chapter 181, Volume 19, Laws of Delaware, passed at Dover March 25, 1891, is an act entitled "An Act for the benefit of creditors and stockholders of insolvent corporations," reading as follows:

"Section 1. That whenever a corporation shall be insolvent, the chancellor, on the application and for the benefit of any creditor or stockholder thereof, may, at any time, in his discretion, appoint one or more persons to be receivers of and for such corporation, to take charge of the estate, effects, business and affairs thereof, and to collect the outstanding debts, claims and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation or otherwise, all claims or suits, to appoint an agent or agents under them, and to do all other acts which might be done by such corporation and may be necessary and proper; the powers of such receivers to be such and continue so long as the chancellor shall think necessary; provided however, that the provisions of this act shall not apply to corporations for public improvement."

That said defendant company is not a corporation for public improvement.

9. That said defendant company is insolvent, in that it is unable to pay its debts as they become due in the ordinary course of business. Upon information and belief these com-

plainants aver that, owing to said insolvent financial condition, said defendant company is wholly unable to continue the business of said company and has practically ceased said business.

10. That by reason of judgments obtained and which in due course of events will be obtained against said company, and of mesne and execution attachment and executions and levies against the property of said company, by certain few of the creditors of said company, there will be, under the conditions aforesaid, a great wasting of the assets of said company by piece-meal sales thereof under said attachments and executions, from which will result an unequal and wholly inequitable application of the assets of said company to the debts of said company.

11. Your orators are advised, informed and believe, and thereon aver, that the appointment of receivers of said company by this honorable court, for the purpose of the preservation of its assets for your orators and other creditors of said company, and for the liquidation of the affairs of the said company and application of its assets to the payment of the debts of your orators and other creditors of said company, will result in the full payment of the debts of said company, and that the lack of said receivers will result in such great wasting and loss in the assets of said company as to leave a large portion of the debt of your orators and numerous other creditors of said company unpaid by said company.

In consideration whereof and forasmuch as your orator is remediless in the premises at and by the strict rule of the common law, and is only relievable in a court of equity, where matters of this kind are properly cognizable and reviewable, and that the said defendant may answer the premises, your orators now pray the court as follows:

1. That the court may appoint one or more suitable persons to be receiver or receivers of the assets, effects and credits of said defendant company, in accordance with the provisions of the said statute of the State of Delaware hereinafter recited.

2. That your honors may grant unto your orators such other and further relief as the circumstances of this case may require and to the court shall seem meet.

3. May it please your honors to grant to your orators a writ of subpoena to be directed to the said the Diamond State Steel Company, thereby commanding it, at a certain time, and under a certain penalty therein to be limited, personally to appear before this honorable court and then and there full, true, direct and perfect answer make to all and singular the premises, and to stand, perform, and abide by such order, direction and decree as may be made against it in the premises, as shall seem meet and agreeable to equity.

And your orators will ever pray, etc.

Henry A. Hitner's Sons,  
(Signed) Joseph G. Hitner.

(Signed) Christopher L. Ward,  
Solicitor for Complainants.

State of Delaware, New Castle County, ss.:

Joseph G. Hitner being duly sworn, says: I am one of the complainants in the foregoing bill of complaint; I have read said bill of complaint and am familiar with the contents thereof, and the facts and allegations therein contained are true to my own knowledge, except as the same are averred upon information and belief, respecting all of which I verily believe the same to be true.

(Signed) Joseph G. Hitner.

Subscribed and sworn to by the said Joseph G. Hitner before me this 28th day of November, A. D., 1904.

(signed) Wm. A. Raffetty,  
Notary Public.

[SEAL]

Commission expires January 26, 1907.

**Form No. 5****Complaint by Stockholder and Creditor for Receiver of Hotel**  
(Chancery Practice)

IN CHANCERY OF NEW JERSEY

*To His Honor, Edwin A. Walker, Chancellor of State of New Jersey:*

Complaining, show unto your honor your orators, August H. Generotzky and Robert Simons, both of the City of Atlantic City, in the State of New Jersey, stockholder and creditor of the Barnay Hotel Company, a corporation of the State of New Jersey, for and in behalf of themselves and all other creditors and stockholders of said company who shall come in and contribute to the expense of this suit, that on or about the 24th day of November, 1914, certain persons incorporated themselves by the name and style of Barnay Hotel Company for the purpose of conducting a hotel, restaurant and cafe, and carrying on the business incident thereto, and for such purpose the said company was authorized to raise by subscription a capital stock of fifty thousand (\$50,000) dollars to be equally divided into common and preferred shares of fifty (\$50) each; and said company was also authorized to issue certificates of stock, and to purchase, use, hold, possess and enjoy such real estate as should be necessary and expedient for the uses of such corporation, and to sell, mortgage and lease or otherwise dispose of the same at pleasure, to borrow money and issue bonds therefor and were to possess the powers and be subject to the general restrictions set forth in an act entitled, "An Act concerning corporations (revision of 1896)," so far as the same were applicable thereto.

And your orators further show that after the incorporation of said company as aforesaid, books of subscription to the capital stock of the said company were duly opened, and one thousand (\$1,000) dollars of the capital stock was subscribed; and that your orator, August H. Generotzky, is the owner and possessor of five (5) shares of the said capital stock of the par value of fifty (\$50) dollars, and that the said com-



pany is indebted to your orator eight hundred (\$800) dollars for money loaned and for endorsements in the sum of eight hundred (\$800) dollars;

And that your orator, Robert Simon, is a creditor of said company, and that the said company is also indebted to him in the sum of six hundred (\$600) dollars for goods sold and delivered to said company.

And your orators further show that after its organization the said company engaged in and conducted the business of hotel, restaurant and cafe in Atlantic City, Atlantic County, in this state, leased certain property in said city and county aforesaid for the purpose of conducting said business, purchased furnishings and stock for said business, and has continued to carry on said business until the 7th day of September, A. D. 1915, when said company stopped business.

And your orators further show that on the 1st day of June, A. D. 1915, and since that time certain commercial paper made by said company for the aggregate sum of ten thousand two hundred ninety-six dollars and seventy-two cents (\$10,296.72), or thereabouts, has become due and payable, and although renewed from time to time, said paper has not been paid for lack of funds wherewith to pay it.

And your orators further show that said paper will not be paid when it becomes due and will be protested because said company has no funds wherewith to pay it.

And your orators further show that on the 30th day of August last other commercial papers of the same company in all amounting to the sum of four thousand (\$4,000) dollars, fell due and would have been protested for non-payment had not your orator, August H. Generotzky, who is endorser upon it, provided for the payment thereof out of his individual funds.

And your orators further show that they are informed and believe it to be true that the liabilities of said company amount to over thirty thousand and two hundred dollars, of which amount fourteen thousand two hundred ninety-seven dollars are represented by promissory notes made by the said com-

pany, some of which are past due and others falling due daily and which said company has no funds to meet, the total amount of all its resources inventoried at full value was on the 1st day of September, A. D. 1915, less than eight thousand dollars, of which two thousand or thereabouts was in stock and materials used in the business of the company, and which has since been largely increased.

And your orators further show that said company owns no real estate and that the personal estate of said company would not produce, in the judgment of those who are acquainted with the value thereof, the sum of six thousand dollars at private sale, and that said personal property is encumbered by chattel mortgages in the amount of fifteen thousand dollars.

And your orators further show and charge the fact to be, that the said company is insolvent; and that it has not the funds to carry on the ordinary business of said organization; and that it has been carrying on said business at great pecuniary loss to the stockholders of said company; and that, owing to the great depression in business and general uncertainty as to the future, the business of said corporation can not be conducted so as to enable the said corporation to pay its just debts or carry on its operations with profit to its stockholders; and that the further prosecution by the said company of its said business would necessarily tend to the sacrifice, injury and depreciation of the rights of its stockholders and creditors.

In consideration whereof, and forasmuch as your orators are without adequate remedy without the assistance of this honorable court, where matters of this nature are particularly cognizable and relievable;

To the end, therefore, that the said company may full, true and perfect answer make to all and singular the matters and things hereinbefore stated, and that it may set forth and discover the goods and chattels, rights and credits, moneys and effects, and real estate of every kind and description belonging to said corporation; and that your orators and other

creditors and stockholders of the said company may be paid what is justly due them; and that the said company may be enjoined from exercising any of its franchises and from receiving any debts due to it, and from paying and transferring any of its moneys or effects, and from continuing its said business; and that it may be decreed to be insolvent; and that a receiver may be appointed, according to the form of the statute in such case made and provided; and that your orators may have such further or other relief in the premises as the nature of the case may require, and as may be agreeable to equity and good conscience;

May it please your honor, the premises considered, to grant unto your orators the state's writ of injunction, issuing out of and under the seal of this honorable court, directed to the said the Barnay Hotel Company, its officers, servants and agents, enjoining and restraining them and each of them from exercising any of the privileges or franchises granted by the act incorporating said company, and from collecting or receiving any debts due to said corporation, and from paying out, selling, assigning or transferring any of the estate, money, funds, lands, tenements or effects of said corporation; and also the state's writ of subpoena, likewise issuing out of and under the seal of this honorable court, to be directed to the said Barnay Hotel Company, therein and hereby commanding the said corporation to appear before your honor, according to law and the course of this court, at a certain day and under a certain penalty therein to be expressed, then and there to answer the premises, and to stand to, abide and perform such decree as to your honor shall seem meet.

And your orators will ever pray, etc.

Wootton, Harcourt & Steelman,  
Solicitors for and of Counsel with Complainants.

State of New Jersey, County of Atlantic, ss.:

August H. Generotzky, of full age, being duly sworn according to law on his oath, says that he has read the above bill of complaint and knows the contents thereof and that the same is

true to his own knowledge, except as to matters that are therein stated to be on his information or belief. And further, that the Barnay Hotel Company was authorized to issue \$50,000 of capital stock, consisting of preferred and common shares of the par value of \$50; that deponent at the time of the organization of said company subscribed to five shares of the capital stock of said company which are owned by him and still in his possession; that since the organization of said company your orator has been the director and treasurer and is and has been intimately acquainted with the business of said company; that since said organization said company has not been successful in the conduct of its hotel and cafe business, which failure has resulted in the accumulation of liabilities aggregating approximately thirty thousand two hundred and three dollars, of which eleven thousand nine hundred and seven dollars represents accounts payable, four thousand dollars rent due August 25, 1915, and fourteen thousand two hundred and ninety-six dollars notes payable; that of the notes payable the note of deponent for four thousand dollars is included therein, but your deponent further says that there are no funds nor will there be any funds with which to pay the debts of said company as herein stated; that the assets of said company consist of personal property worth less than eight thousand dollars in the judgment of deponent; that said company is insolvent and is incapable of carrying on its business so as to enable it to meet its obligations and prevent injury and depreciation to the rights of its creditors.

August H. Generotzky.

Sworn and subscribed to before me this seventh day of September, A. D. 1915.

Ralph Harcourt,

Attorney at Law of New Jersey.

State of New Jersey, County of Atlantic, ss.:

Robert Simon, of full age, being duly sworn on his oath, says that he is the complainant named in the foregoing bill of complaint; that he is in business in Atlantic City, N. J., trading as Simon Pure Bottling Company; that his business

consists of the manufacture and bottling of nonfermented or soft drinks; that since the 6th day of September, 1915, the Barnay Hotel Company has been indebted to deponent in the sum of six hundred dollars for goods sold and delivered to said Barnay Hotel Company; that deponent has made frequent demand for the amount due him from said company, but the payment of said debt has always been refused; deponent further says that to the best of his knowledge the liabilities of said company amount to upwards of thirty thousand dollars and are far in excess of the assets; that said company has no funds with which to pay its debts, and that said company in its present condition can not pay the amount due to deponent nor any part thereof.

Robert Simon.

Sworn and subscribed to before me this 7th day of September, A. D. 1915.

Ralph Harcourt,

Attorney at Law of New Jersey.

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### Form No. 6

#### Complaint by Shareholder for Receiver for Savings Bank and Loan Association

UNITED STATES OF AMERICA. IN THE DISTRICT COURT OF THE  
UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN,  
SOUTHERN DIVISION. IN EQUITY

Edward W. Bishop, Complainant,

vs.

The Michigan Savings & Loan Association, and George Lord,  
Defendants.

In the Matter of the Claim of James S. Galloway upon Certificate No. 819. Bill of Complaint of E. W. Bishop.\*

*To the Judges of the Circuit Court of the United States for the Eastern District of Michigan, Southern Division:*

Edward W. Bishop, of the City of Muncie, and a citizen of the State of Indiana, brings this his bill against The Michigan

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\* Record and Briefs Case No. 2352, United States Circuit Court of Appeals, Sixth Circuit.

Savings & Loan Association, and a citizen of the State of Michigan, and George Lord, of Lansing, Mich., and a citizen of said State of Michigan. And thereupon your orator complains and says that he is a shareholder in The Michigan Savings & Loan Association of Detroit, Mich., a corporation organized and existing under and by virtue of the laws of the State of Michigan, and having its principal office in the City of Detroit, County of Wayne and State of Michigan; that said corporation is a mutual building and loan association, organized according to its articles of association for the purpose of affording its members a safe and profitable investment for their savings and to aid them in the purchase and improvement of real estate. Complainant further alleges that he is the owner of shares of stock in said corporation of the par value of two thousand (\$2,000) dollars and upwards; that the last statement of said corporation, dated July 1, 1900, made by said corporation to the secretary of state showed its total assets to be \$622,344.77 and liabilities the same. Complainant further alleges that said corporation had a large amount of money loaned on real estate at Galveston, Texas, and owned a large amount of real estate in said last-named city; that since the rendering of the statement above referred to all of the buildings on the lands, either owned by or mortgaged to said corporation, at Galveston, Texas, were swept away and utterly destroyed, and that the losses sustained by said corporation in the City of Galveston have so impaired its assets that it will be unable to profitably continue its business. Complainant further alleges upon information and belief that owing to the large amount of stock that has been withdrawn from defendant corporation during the past two years, it has been unable to make any new loans, and that its earning capacity is so diminished that the net earnings of said corporation are not sufficient to pay the expenses of carrying on its business. Complainant further alleges that the by-laws of defendant corporation provide for a board of directors, consisting of seven members, and that since November, 1900, said corporation has been managed

by but three directors; that said corporation, in carrying on its business and for the purpose of paying off withdrawing shareholders, has borrowed large sums of money without authority of law, and to secure the repayment of such loans has hypothecated certain of its securities; that said corporation has shareholders or assets in the States of Michigan, Indiana, Pennsylvania, Texas, North Dakota, Arkansas and Wyoming, and that the interests of its shareholders demand that a receiver be appointed to conserve the assets and wind up the affairs of said corporation; that George Lord, chief of the building and loan division in the office of the secretary of state of the State of Michigan, acting for the secretary of state, claims to be in possession of the office, books and assets of said corporation in pursuance of the provisions of the laws of the State of Michigan, and is made a party defendant to this bill of complaint. All which actings, doings and pretenses of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your orator in the premises. In consideration whereof, and forasmuch as your orator is entirely remediless in the premises, according to the strict rules of the common law, and can only have relief in a court of equity where matters of this nature are properly cognizable and relievable. To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, without oath, an answer under oath being hereby waived, full, true, direct and perfect answer make to all and singular the premises, and that as fully and particularly as if they were particularly interrogated thereto, and that a receiver of said defendant corporation may be appointed, and that your orator may have such other and further relief in the premises as the nature of the case may require.

May it please the court to grant unto your orator the most gracious writ of subpoena of the United States of America, to be directed to the said Michigan Savings & Loan Association and to said George Lord, thereby commanding them and each

of them at a certain day and under a certain penalty to be therein specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises and to stand to and abide such order and decree therein as to your honors shall seem meet and as shall be agreeable to equity and good conscience, and your orator shall ever pray. Edward W. Bishop.

State of Indiana, County of Delaware, ss.:

Edward W. Bishop, being duly sworn, says that he has heard read the foregoing bill of complaint by him subscribed and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated to be upon his information and belief, and as to those matters he believes it to be true. Edward W. Bishop.

Subscribed and sworn to before me this 27th day of March, A. D. 1901.

John J. Hartley,

Notary Public, Delaware County, Ind.

My notarial commission expires February 6, 1903.

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## Form No. 7

### Petition by Shareholder and Creditor for Receiver of Traction Company

(Form under Civil Code Procedure)

John C. Hooven, Plaintiff,

vs.

The Cincinnati, Lawrenceburg & Aurora Electric Street R. R.  
Company and The Union Savings Bank & Trust Company,  
a Corporation, as trustee of the bondholders of said  
company, Defendant.

#### *Petition\**

Now comes the plaintiff, John C. Hooven, and states to the court that the defendant, The Cincinnati, Lawrenceburg &

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\* Copy of petition in Hooven v. C. L. & A. Traction Co., Case No. 6623, Insolvency Court, Hamilton County, Ohio.



Aurora Electric Street R. R. Company is a corporation organized and existing by consolidation in accordance with the laws of the State of Ohio and the State of Indiana, and is the owner of and is operating an electric street railroad beginning at Anderson's Ferry, in the City of Cincinnati, and running thence westwardly through the villages of Delhi, Sayler Park, Fernbank, Addyston, North Bend and Cleves, through the county of Hamilton, across the state line into Dearborn County, Indiana, to the cities of Lawrenceburg and Aurora, together with a branch extending northwardly from Valley Junction to the City of Harrison, Ohio, and is engaged as a common carrier in carrying passengers between said points, with the right under its charter to carry United States mail, express matter and freight, but of which right the company has never availed itself.

That said company was organized in the year 1899, with a capital stock of one million (\$1,000,000) dollars, consisting of ten thousand (10,000) shares of the par value of one hundred (\$100) dollars each, divided into seven hundred and fifty thousand (\$750,000) dollars of common stock and two hundred and fifty thousand (\$250,000) dollars of six (6%) per cent. cumulative preferred stock; that all of said common stock has been issued as paid-up stock and that one thousand nine hundred and eleven (1,911) shares amounting to the par value of one hundred and ninety-one thousand (\$191,000) dollars of the preferred stock has not been issued, but remains in the treasury of the company; that there are outstanding seven hundred and fifty thousand (\$750,000) dollars' worth of five (5%) per cent. gold bonds secured by mortgage on all the property franchises and assets of the company, and that the said defendant, The Union Savings Bank & Trust Company, is the trustee named in said mortgage, and that the interest coupons on said bonds have been paid up to July 1, 1913, at which time there will be due and payable the semi-annual interest amounting to the sum of eighteen thousand seven hundred and fifty (\$18,750) dollars.

Plaintiff says that, prior to March 25, 1913, it has regularly paid its interest on its said mortgage indebtedness and had paid its creditors, and that the earnings of said railroad were sufficient to keep up its fixed charges when the unprecedented rains and floods occurring at that time washed out and destroyed large sections of the fills and tracks and two of its most important bridges, one spanning the Miami River at Cleves, which was a highway bridge, and the other spanning the White Water River near Valley Junction; that the destruction of said bridges has entirely suspended the through operations of its cars and greatly reduced its revenue and earning capacity.

That the plaintiff is the owner and holder of four thousand (4,000) shares of the aforesaid common stock and a creditor of the defendant corporation for moneys advanced in the sum of one hundred and twenty-five thousand (\$125,000) dollars, with interest thereon; that the claims and accounts of various persons, firms and corporations who have furnished supplies and material necessary to the maintenance and operation of the aforesaid public utility during a period of six months now last past, are to a large extent unpaid, and that the liens threatened by the said claimants will become a charge against the legal title to said property; that suits are threatened against the defendant; that the resulting judgments and levies would be likely to cause the loss of essential portions of its property, and thus interfere with its operation as a public utility and its service of the public in that respect; that the value of said railroad depends upon its continuous operations and that its continuous operations for the advantage, not only of this plaintiff, but of all other stockholders, bondholders and creditors of said railroad and the public in general; that it will be necessary to borrow immediately upon the credit of said railroad a large sum of money to repair the damage done by the aforesaid extraordinary flood, and to put said railroad company back into such condition that it can be safely operated, and that said railroad company has no

means to undertake this expenditure; that at a meeting of the directors held on the 12th day of June at two o'clock p. m., in the City of Cincinnati, a resolution was passed declaring that it was for the best interest of all concerned that a receiver be appointed to take charge of the operation and management of its said railroad and directing that the company enter its appearance in an action brought for that purpose and consent to the appointment of such receiver; that on the same day, at a meeting of the stockholders of said company, at which all the stockholders of the company were present, in person or by proxy, such action of the directors was unanimously approved and ratified.

Wherefore, the plaintiff prays that a receiver may be appointed to take custody of all the property and assets of the defendant railroad company, with power to operate the same, subject to the orders of this court, and with those powers usually vested in receivers of like property; and that the liens of such creditors as may have liens against this property may be marshalled and a priority, if any, in the payment thereof, and of the other creditors of this company, may be determined by this court, and that the said railroad, if necessary, may be sold for the payment of said liens and general relief to which the plaintiff may in equity be entitled.

\_\_\_\_\_,  
Attorney for Plaintiff.

State of Ohio, \_\_\_\_\_ County, ss.:

\_\_\_\_\_, being first duly sworn, says that he is the plaintiff named in the foregoing petition and that the facts therein set forth are true.

Sworn to before me and subscribed in my presence this  
\_\_\_\_\_ day of \_\_\_\_\_.

[SEAL]

\_\_\_\_\_,  
Notary Public.

**Form No. 8****Complaint by Trustee of Bondholders for Receiver of  
Irrigating Company**

IN THE UNITED STATES CIRCUIT COURT, NINTH JUDICIAL CIR-  
CUIT, NORTHERN DISTRICT OF CALIFORNIA

The Atlantic Trust Company (a Corporation), as trustee of  
the trusts created by the mortgage in this complaint  
described, Plaintiff,

vs.

The Woodbridge Canal & Irrigation Company (a Corporation),  
Defendant.

*Bill of Complaint*

*To the Justices of the Circuit Court of the United States for  
the Northern District of California:*

The Atlantic Trust Company, of the City of New York,  
and a citizen of the State of New York, brings this its bill  
against the Woodbridge Canal & Irrigation Company, of San  
Francisco, and a citizen of the State of California, and there-  
upon your orator complains and says:

I

That at all the times in this complaint mentioned the  
plaintiff, the Atlantic Trust Company, was and now is a cor-  
poration organized and existing under and by virtue of the  
laws of the State of New York, having its principal place of  
business in the city and county of New York, in said state,  
and being formed and incorporated for the purpose and with  
the express powers of accepting, holding and managing trusts  
and trust properties.

That at all of said times the Woodbridge Canal & Irriga-  
tion Company was and now is a corporation, duly organized  
and existing under and by virtue of the laws of the State of

California, having its principal place of business in the city and county of San Francisco, in said state, and was formed for the purpose and with the powers of owning and operating an irrigating canal in the County of San Joaquin, in said State of California.

That said defendant is a citizen and resident of the Northern Judicial District of the State of California, and that this plaintiff is a citizen and resident of the Southern Judicial District of the State of New York.

## II

That heretofore, to wit, on or about the 17th day of July, 1891, at said city and county of San Francisco, the said Woodbridge Canal & Irrigation Company made and executed one hundred (100) bonds, numbered from one (1) to one hundred (100), both numbers inclusive, each of which said bonds was in the words and figures following, to wit:

“UNITED STATES OF AMERICA, STATE OF CALIFORNIA

No. ———

\$1,000

First Mortgage Convertible Gold Bond of the Woodbridge  
Canal & Irrigation Company.

The Woodbridge Canal & Irrigation Company, a corporation duly organized under the laws of the State of California, acknowledges itself indebted to the bearer, or to the registered owner thereof, in the sum of one thousand dollars, which it promises to pay in the gold coin of the United States of America, of the present weight and fineness, on the 1st day of September, in the year 1901, at the office of the Atlantic Trust Company in the City of New York, with interest thereon at the rate of six per centum per annum, payable semi-annually at the same place, upon presentation and surrender of the coupons hereto annexed, on the 1st day of March and September in each year, as they respectively become payable, so long as the principal remains unpaid.

This bond is one of a series of one hundred bonds of similar amount, tenor and date, which are secured by a mortgage or deed of trust, bearing date this day, executed and delivered by the Woodbridge Canal & Irrigation Company to the Atlantic Trust Company, as trustee, conveying and assigning to the said trustee all its corporate property and franchises now owned or hereafter acquired.

Any lawful holder of this bond, upon presenting the same at the office of said trustee, with all unmatured coupons attached thereto, may have the same registered in his own name or that of any other person, in a book to be kept for that purpose, and such name, with the date of registry, shall be endorsed upon the bond by the said trustee. From the date of such registry until, by a like endorsement, it be again payable to bearer, such bonds shall be transferable only by a written transfer thereof on the books of the trustee, such transfer and the date thereof to be in like manner endorsed upon the bond, and while so registered, all payments becoming due thereon, either for principal or interest, shall be paid only to such registered owner or to his order. Successive registration and transfers to bearer may be made at the option of any lawful holder and owner of this bond.

It is expressly agreed that in case default shall be made in the payment of any semi-annual installment of interest on the day whereon the same shall fall due, as herein provided, or in the performance of certain covenants contained in said mortgage or deed of trust, and should default in any of such cases continue for the space of six months, then, and in either of such cases, the principal sum herein mentioned may, as in said mortgage or deed of trust provided, immediately become due and payable, anything herein contained to the contrary notwithstanding.

At any time between the 1st day of July, 1894, and the 1st day of January, 1895, this bond, upon presentation and surrender thereof to the said trustee, with all unmatured coupons attached, may, at the holder's option, be converted into the capital stock of this company at par, and the holder

in such case shall be entitled to receive in payment of this bond one thousand shares of said capital stock of one dollar each, said stock being reserved in the treasury of the company for that purpose.

This bond is also entitled to the benefits of the sinking fund in said mortgage or deed of trust provided for. The holder of this bond, by acceptance thereof, hereby waives any personal claim or demand against the stockholders of said company for the indebtedness incurred hereby.

This bond shall not become valid or obligatory until the certificate endorsed hereon shall have been duly signed by or in behalf of the said Atlantic Trust Company as trustee.

In witness whereof, the Woodbridge Canal & Irrigation Company has caused these presents to be sealed with its corporate seal and to be signed by its president and attested by its secretary, and the annexed coupons to be executed with the engraved signature of its secretary this 17th day of July, 1891.

[CORPORATE SEAL]

M. V. B. Watson,  
President

Attest: M. T. Moses, Secretary."

That each of said one hundred bonds was in the words and figures above set forth, except that each was severally numbered as aforesaid, and that to each of said bonds were attached twenty (20) interest coupons, likewise executed by the Woodbridge Canal & Irrigation Company, each of which coupons was in the words and figures following, to wit:  
"\$30.

"On the 1st day of ———, 18—, the Woodbridge Canal & Irrigation Company will pay, at the office of the Atlantic Trust Company, in the City of New York, upon presentation and surrender of this coupon, to the bearer, or to the registered owner thereof, thirty dollars in United States gold coin for six months' interest then due on Bond No. ———.

M. T. Moses,  
Secretary."

That the blanks in said twenty (20) coupons attached to each bond were so filled out as to bear the number of the bond to which they were attached and to fix the date of payment of each coupon so that they should consecutively fall due, one on the 1st day of September and one on the 1st day of March of each year, beginning March 1, 1892, and ending September 1, 1901.

That each of said bonds, when so executed as aforesaid, bore endorsed thereon the following certificate, signed by the plaintiff:

“The Atlantic Trust Company hereby certifies that the within bond is one of the bonds issued under and in pursuance of a certain mortgage or deed of trust, dated July 17, 1891, and duly executed and delivered to said company, as trustee, by the Woodbridge Canal & Irrigation Company.

THE ATLANTIC TRUST COMPANY,

By W. H. Male, President.”

That sixty-six (66) of said one hundred (100) bonds, with said relative coupons attached thereto, when so executed were, by the Woodbridge Canal & Irrigation Company, in exchange for money paid to it, sold and delivered to purchasers thereof prior to September, 1891.

That thirty-three (33) others of said bonds, prior to September, 1894, were by said Woodbridge Canal & Irrigation Company pledged to sundry creditors to secure debts due to them from said Woodbridge Canal & Irrigation Company.

That one (1) of said bonds has never been issued to any person, but is still in the possession of the maker.

### III

That on or about the 17th day of July, 1891, and in order to secure the payment of the said sixty-six (66) bonds so sold and delivered, and the thirty-three (33) bonds so pledged as aforesaid, the said Woodbridge Canal & Irrigation Company executed and delivered to this plaintiff, as trustee of



the trusts thereby created, its certain indenture of mortgage, dated July 17, 1891, and executed in its corporate name by M. V. B. Watson, as its president, and by M. T. Moses, as its secretary, and to which mortgage was affixed its corporate seal.

That said mortgage was further, on or about the day on which it bears date, signed and executed by this plaintiff in acceptance of the trusts thereby created and imposed upon this plaintiff.

That said mortgage was duly acknowledged, so as to entitle it to be recorded, and it was recorded on the 10th day of August, 1891, in book "A" of Deeds, Volume 74, page 361, in the county recorder's office of the County of San Joaquin, State of California.

That a copy of said mortgage is hereto attached, marked Exhibit "A," and is here referred to and made part of this complaint.

That in and by said mortgage the said Woodbridge Canal & Irrigation Company did mortgage to this plaintiff, as trustee, to secure the payment of the aforesaid bonds, the entire corporation property of said Woodbridge Canal & Irrigation Company, and all its lands, tenements, hereditaments, privileges, franchises, rights of way, flowage and riparian rights, easements and fixtures, then owned or thereafter to be acquired by it, and all its canals, flumes, headworks, gates, dams and bridges then constructed or to be thereafter constructed, extending from the point of diversion in the Mokelumne River, in the Town of Woodbridge, in San Joaquin County aforesaid, in a westerly direction to Taison and New Hope, in said county, and in an easterly and southerly direction to the Calaveras River, with all other or branch canals that might be thereafter constructed within said territory south and west of the Mokelumne River; and all the estate, right, title and interest, claims and demands, rights of way and other easements, whether at law or in equity, of the said canal company of, in and to the same; and also all buildings, fixtures and personal property thereon or belonging to said canal

company; and all receipts, incomes and profits which said company shall derive on account of any contract or agreement for the transfer of water rights as appurtenant to specified lands, excepting the annual rentals for the use of said water and interest on such contracts or agreements.

#### IV

That on said 17th day of July, 1891, and at the time of the execution of the said bonds and the said mortgage, M. V. B. Watson was the president and M. T. Moses was the secretary of the said Woodbridge Canal & Irrigation Company, and as such president and secretary they were duly and fully authorized and empowered to execute the said bonds and mortgage, in the name and as the act of the said Woodbridge Canal & Irrigation Company, and to attach to said bonds and mortgage its corporate name, and to affix thereto its corporate seal, by resolution adopted by the vote of the holders of more than two-thirds of its capital stock at a meeting of its stockholders, duly and regularly called, notified, organized and held at the office of the Woodbridge Canal & Irrigation Company in the city and county of San Francisco, State of California, on the 11th day of July, 1891; and said president and secretary were further authorized to so execute said bonds and mortgage by resolution of board of directors of the said Woodbridge Canal & Irrigation Company duly passed and adopted.

#### V

That since the execution of said mortgage the Woodbridge Canal & Irrigation Company has constructed and now owns an irrigating canal in the County of San Joaquin, State of California, beginning at a dam in the Mokelumne River, in the Town of Woodbridge, in the southwest quarter ( $\frac{1}{4}$ ) of section thirty-four (34), in township four (4), north of range six (6) east, Mount Diablo Base and Meridian, and running thence through said section thirty-four (34) and through and

across portions of sections three (3), ten (10), eleven (11), fourteen (14), twenty-three (23), twenty-six (26), thirty-five (35), and thirty-six (36), in township three (3), north of range six (6) east, and through and across portions of sections one (1), twelve (12) and thirteen (13), in township two (2), north of range six (6) east; and also through and across section eighteen (18), in township two (2), north of range seven (7) east, and following the line of division between subdivisions fifty-one (51) and sixty-one (61), of El Rancho Del Campo de Los Franceses to the Calaveras River.

That the said Woodbridge Canal & Irrigation Company has likewise constructed and now owns and is operating sundry branch or lateral canals, diverging from said main canal above referred to, in a general westerly direction and irrigating the lands along their course.

That the Woodbridge Canal & Irrigation Company, since the execution of said mortgage, has likewise acquired and now owns various other lands and properties, contracts and mortgages in said County of San Joaquin and in the northern district of the State of California, a list of which properties is hereto appended, marked Exhibit "B," and is here referred to and made part of this complaint.

## VI

That no part of the principal sum mentioned in any of said bonds has ever been paid, and no part of the interest upon said bonds, which, by the terms thereof and of the coupons attached thereto, became due and payable on the 1st day of September, 1894, has ever been paid, nor has any money for the purpose of paying said September interest ever been paid or tendered to this plaintiff.

That on or about the 1st day of September, 1894, the holders of fifty-five (55) of said bonds which had been so sold as aforesaid by the Woodbridge Canal & Irrigation Company, did present, at the office of this plaintiff, in the City of

New York, the fifty-five (55) several coupons attached to said bonds and then on said day, falling due as aforesaid according to their terms, and did demand from this plaintiff payment thereof; that none of said coupons nor any part of the money due thereon, was then paid by this plaintiff, or by any one, nor has any part of said money due on said coupons ever been paid by this plaintiff, or by any one; and plaintiff avers that thereby, on said 1st day of September, 1894, default was made by the said Woodbridge Canal & Irrigation Company in the payment of the said installment of interest upon said bonds.

That at a special meeting of the board of directors of the Woodbridge Canal & Irrigation Company, held at its office in the city and county of San Francisco on the 1st day of October, 1894, a resolution was unanimously adopted, declaring that said Woodbridge Canal & Irrigation Company was then unable, and would continue to be unable to pay at any time within the ensuing six months, that is to say, prior to April 1, 1895, any of its indebtedness or any of the interest upon the said bonds; and further providing that it waived all conditions and provisions specified or provided in article fifth of the said mortgage, Exhibit "A" hereof, as conditions precedent to the enforcement of the lien created by said mortgage; and in and by the said resolution this plaintiff was authorized and requested to immediately commence this action for the foreclosure of the said mortgage, and to enforce the payment of the principal and interest of the said bonds.

That on the 2d day of October, 1894, and prior to the commencement of this action, the owners and holders of fifty-five (55) of the said bonds then outstanding did request, in writing, this plaintiff to commence this action, and did, in writing, express their election and option that the whole principal sum mentioned in each and all of the mortgage bonds then outstanding should forthwith become due and payable.

And plaintiff avers that, by reason of said default, resolution and notice of election and option, the entire principal sum

of each and all of the said bonds did then, on the 2d day of October, 1894, mature and become payable.

## VII

That, as this plaintiff is informed and believes and so avers the fact to be, the property mortgaged to it and set forth in said mortgage and in Exhibit "B" hereof is insufficient to discharge the mortgage debt, as aforesaid, and can not, in all probability, be sold for enough to pay the said ninety-nine (99) bonds, or said sixty-six (66) bonds, and the costs and expenses of this proceeding.

That the said canal is in the receipt of an income from the sale and rentals of water and must be operated as a whole, and kept in repair and under one management, or it will be entirely lost, and all the water rights and franchises possessed by the canal company will be forfeited from nonuser, and said franchises will be forfeited and annulled and the value of said canals destroyed in case the diversion and distribution of water thereby is suspended or discontinued.

That, therefore, the appointment of a receiver of said property, with power to control and manage the said canals and all of them, is necessary for the protection of said bondholders by this court in this proceeding.

Wherefore plaintiff prays:

1. That this honorable court, upon the filing of this complaint, appoint some suitable person a receiver in this action, to take charge of said mortgaged property and to maintain and operate said canals pending this action and until final sale under any judgment of foreclosure herein, under the directions of this court and with such powers and authority as this court, by its order, may from time to time confer upon him.

2. That this court, by its decree, ascertain and determine what and how many bonds of the series described in said

mortgage have been lawfully issued and are now outstanding and unpaid, and declare that the entire principal sum of said bonds so found to be issued is now due and payable; and that the court further, by said decree, fix and determine the amount of money due for principal and interest upon said bonds and enter judgment therefor against the said Woodbridge Canal & Irrigation Company in favor of this plaintiff, as trustee for said bondholders; and that this court further, by its decree, fix and determine a suitable attorney's fee for payment of the services of the plaintiff's attorneys in this action, and further fix and determine the amount to be paid this plaintiff as compensation for its services as such trustee; and that this plaintiff may have judgment against the Woodbridge Canal & Irrigation Company for the amount found due for principal and interest on said bonds and of said attorney's fee, trustee's commissions and costs and expenses of this action.

3. That further, by said decree, this court shall order all of said franchises, canals, lands and other mortgaged premises and property to be sold by the marshal of the said Northern Judicial District of the State of California at public auction, in accordance with law and with the course and practice of this honorable court; that the proceeds of said sale may be applied in the payment of the expenses of sale and of the costs in this action and of said trustee's commissions and counsel fees, and in the payment of the amount found due by this honorable court upon said outstanding bonds to the persons holding the same; that said defendants and each of them and all persons claiming or to claim by, through or under them, and each of them, subsequent to the execution of said mortgage, either as purchasers, encumbrancers or otherwise, may be barred and foreclosed of all right, title, claim or equity of redemption in the said mortgaged property and premises and every part thereof; that the plaintiff or any other party to this suit, or any bondholder may become a purchaser at such sale; that the marshal execute deeds to the purchaser or purchasers, and that said purchasers be let into the possession of the property

bought by them, on production of such deed; and that such other and further relief may be by said decree given in the premises as to this court shall seem meet and agreeable to equity.

And may it please your honors to grant unto this plaintiff a writ of subpoena of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendant, the Woodbridge Canal & Irrigation Company, therein commanding it on a day certain therein to be named and under a certain penalty, to be and appear before this honorable court, then and there to answer (but not under oath) all and singular the premises and to stand to, perform and abide by the said order, direction and decree, as may be made against it in the premises, as shall seem meet and agreeable to equity and good conscience.

And the complainant, as in duty bound, will ever pray, etc.

Page, Ellis & Wheeler, Solicitors for Plaintiff.

*Exhibit "A"*

This indenture, made on the 17th day of July, 1891, between the Woodbridge Canal & Irrigation Company, a corporation duly created and organized under the laws of the State of California, and having its principal place of business in the city and county of San Francisco, in said state, and the location of its works in the County of San Joaquin, in said state (hereinafter called "the company"), party of the first part, and the Atlantic Trust Company, a corporation duly organized and existing under the laws of the State of New York and doing business in the City of New York, as trustee (hereinafter called "the trustee"), party of the second part, witnesseth:

That whereas, the said company is now the lawful owner of a certain irrigating canal, flume and head works in the County of San Joaquin aforesaid, and of various lands, tene-

ments, hereditaments, privileges, franchises, rights of way, water rights and other easements, contracts, fixtures and property thereunto appertaining, and hereinafter more particularly described, conveyed and assigned;

And whereas, the company is desirous of fully completing and equipping the said canal and head works in the Mokelumne River, in accordance with the plan of its chief engineer, so as to enable the said company to furnish water for the thorough and complete irrigation of about one hundred thousand acres of farming land lying south and west of the said river, in San Joaquin County;

And whereas, for the purpose of securing money for the objects aforesaid and for the maintenance and operation of the said canal, and for the payment of said company's existing indebtedness and the general transaction of its business, the said company desires to borrow the sum of one hundred thousand dollars;

And whereas, at a special meeting of the stockholders of said company, duly called and held for that purpose on the 11th day of July, 1891, at the office of the company, in the City of San Francisco and State of California, it was duly resolved, by a vote of more than two-thirds in interest of said stockholders, that the said company be authorized to borrow said sum and to issue its bonds as hereinafter described, for said amount and to execute its mortgage, or deed of trust, to secure the same, as may more fully appear by a reference to the said resolutions entered upon the minutes of the company;

And whereas, the said company, to that end, is about to execute and to place in the hands of the said trustee, to be issued, certified and delivered, as shall be directed by resolution of the board of directors of said company, its one hundred corporate bonds of one thousand dollars each, numbered consecutively from one to one hundred, both inclusive, with semi-annual coupons or interest warrants attached and with certificates to be signed by the said trustee, all of which bonds,



coupons and certificates are in the following form, that is to say:

(Form of Bonds)

UNITED STATES OF AMERICA, STATE OF CALIFORNIA.

No. ———

\$1,000

First Mortgage Convertible Gold Bond of the Woodbridge  
Canal & Irrigation Company.

The Woodbridge Canal & Irrigation Company, a corporation duly organized under the laws of the State of California, acknowledges itself indebted to the bearer, or to the registered owner thereof, in the sum of one thousand dollars, which it promises to pay in the gold coin of the United States of America, of the present weight and fineness, on the 1st day of September, in the year 1901, at the office of the Atlantic Trust Company in the City of New York, with interest thereon, at the rate of six per centum per annum, payable semi-annually, at the same place, upon presentation and surrender of the coupons hereto annexed, on the 1st day of March and September in each year, as they respectively become payable, so long as the principal remains unpaid.

This bond is one of a series of one hundred bonds of similar amount, tenor and date, which are secured by a mortgage or deed of trust, bearing date this day, executed and delivered by the Woodbridge Canal & Irrigation Company to the Atlantic Trust Company, as trustee, conveying and assigning to the said trustee all its corporate property and franchises now owned or hereafter acquired.

Any lawful holder of this bond, upon presenting the same at the office of the said trustee, with all unmatured coupons attached thereto, may have the same registered in his own name, or that of any other person, in a book to be kept for that purpose, and such name, with the date of registry, shall be endorsed upon the bond by the said trustee. From the date

of such registry until, by a like endorsement, it be again made payable to bearer, such bond shall be transferable only by a written transfer, and the date thereof, to be in like manner endorsed upon the bond, and while so registered all payments becoming due thereon, either for principal or interest, shall be paid only to such registered owner or to his order. Successive registration and transfers to bearer may be made at the option of any lawful holder and owner of this bond.

It is expressly agreed that in case default shall be made in the payment of any semi-annual installment of interest on the day whereon the same shall fall due, as herein provided, or in the performance of certain covenants contained in said mortgage or deed of trust, and should default in any of such cases continue for the space of six months, then, and in either, of such cases, the principal sum herein mentioned may, as in said mortgage or deed of trust provided immediately become due and payable, anything herein contained to the contrary notwithstanding.

At any time between the 1st day of July, 1894, and the 1st day of January, 1895, this bond, upon presentation and surrender thereof, to the said company with all unmatured coupons attached, may, at the holder's option, be converted into the capital stock of this company at par, and the holder in such case shall be entitled to receive in payment of this bond one thousand shares of said capital stock of one dollar each, said stock being reserved in the treasury of the company for that purpose.

This bond is also entitled to the benefits of the sinking fund in said mortgage or deed of trust provided for. The holder of this bond, by acceptance thereof, hereby waives any personal claim or demand against the stockholders of said company, for the indebtedness incurred hereby.

This bond shall not become valid or obligatory until the certificate endorsed hereon shall have been duly signed by or in behalf of the said Atlantic Trust Company as trustee.

In witness whereof, the Woodbridge Canal & Irrigation Company has caused these presents to be sealed with its corporate seal, and to be signed by its president and attested by its secretary, and the annexed coupons to be executed with the engraved signature of its secretary, this ——— day of ———, 1891.

———, President.

Attest: ———, Secretary.

(Form of Coupon)

\$30.

On the 1st day of ———, 18—, the Woodbridge Canal & Irrigation Company will pay, at the office of the Atlantic Trust Company, in the City of New York, upon presentation and surrender of this coupon, to the bearer, or to the registered owner hereof, thirty dollars in United States gold coin for six months' interest then due on Bond No. ———.

———, Secretary.

(Form of Trustee's Certificate)

The Atlantic Trust Company hereby certifies that the within bond is one of the bonds issued under and in pursuance of a certain mortgage or deed of trust, dated ——— and duly executed and delivered to said company, as trustee, by the Woodbridge Canal & Irrigation Company.

The Atlantic Trust Company,

By ———, President.

Now, therefore, this indenture witnesseth, that for the purpose of securing the said bonds for \$100,000, to be issued as herein provided for, and the interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the premises, and of ten dollars to it in hand paid by the said trustee, at or before the execution and delivery of these presents receipt whereof is hereby acknowledged, the said Woodbridge Canal & Irrigation Company has bargained,

sold, granted, conveyed, assigned and set over, and by these presents does bargain, sell, grant, convey, assign and set over unto the said Atlantic Trust Company, as trustee, its successors and assigns, the entire corporate property of said Woodbridge Canal & Irrigation Company, and all its lands, tenements, hereditaments, privileges, franchises, rights of way; flowage and riparian rights, easements and fixtures now owned or hereafter to be acquired, and all its canals, flumes, headworks, gates, dams, bridges, etc., now constructed or to be hereafter constructed, extending from the present point of diversion, in the Mokelumne River, in the Town of Woodbridge in San Joaquin County aforesaid, in a westerly direction, to Taison and New Hope, in said county, and in an easterly and southerly direction to the Calaveras River, with all other or branch canals that may be hereafter constructed within said territory, south and west of the Mokelumne River, and all the estate, right, title and interest, claims and demands, rights of way, and other easements, whether at law or in equity of the said company of, in and to the same, and each and every part and parcel thereof; and also all buildings, fixtures and personal property thereon, or belonging to said company, and all receipts, incomes and profits which said company shall derive on account of any contract or agreement for the transfer of water rights, as appurtenant to specified lands, excepting and not including the annual rentals for the use of said water and interest on such contracts or agreements.

To have and to hold the above granted premises and property with the appurtenances, unto the said trustee, its successors and assigns, in trust and upon the trusts, uses and purposes hereinafter expressed of and concerning the same, for the use and benefit of any and all persons or corporations, who shall hereafter at any time become the purchasers, holders or owners of any of said bonds, subject to the terms, provisions and stipulations in said bonds contained, and also subject to the possession and management of said canal system and property by said company, its successors, assigns or lessees, so long as no default

shall be made in the payment of either interest or principal of said bonds, as herein provided, and so long as the said company shall well and truly observe, keep and perform all and singular the covenants, agreements, conditions, and stipulations in said bonds, and in this indenture, contained and set forth, and which are to be observed, kept and performed by and on the part of said company.

#### Article First

It is further agreed that the company, with the consent in writing of the trustee or its successor or successors, may sell and convey any lands or other property herein mortgaged and not necessary or required to be retained for the convenience and use of the company, and that the proceeds of said sales whenever they amount to the sum of one thousand dollars, or more, shall be applied to the purchase and cancellation of one or more of said mortgage bonds as hereinafter provided for, or of any lien which may be a prior lien upon the premises mortgaged. And the trustee shall then be authorized to release the land or other property thus sold and conveyed from this mortgage; or in lieu of purchasing and canceling said bonds, the proceeds of said sale may be invested under the sanction and with the approval of the trustee, in the purchase of other property, real or personal, required for use by said company, which said other property shall be deemed as embraced in, and covered by, this mortgage.

#### Article Second

It is further mutually agreed, that until the 1st day of January, 1895, unless sooner exchanged in payment of bonds as herein provided for, the company will reserve in its treasury one hundred thousand shares of the capital stock of this company of the par value of one hundred thousand dollars, being the increase thereof duly authorized by the stockholders of said company at a meeting held and called for that purpose on the 11th day of July, 1891.

At any time between the 1st day of July 1894, and the 1st day of January, 1895, upon the presentation and surrender to the company of one or more of the bonds herein provided for, together with all the unmatured coupons thereto attached, the company will deliver to the person or persons so surrendering said bonds in full payment therefor, a certificate or certificates representing one thousand shares of said capital stock so reserved for each bond of the face value of one thousand dollars, and all unmatured coupons annexed, and all bonds surrendered shall be forthwith canceled.

### Article Third

It is further mutually agreed that all moneys received by the company on account of any contract or agreement, now executed or hereafter to be executed, for the transfer of water rights as appurtenant to specified lands, excepting interest on such contracts or agreements, and rentals, as the same accrue and are received, to the amount of the bonds sold and delivered, shall be paid by the company to the said trustee, to be held by the trustee as a sinking fund for the redemption of the bonds herein provided for. And whenever and as often as the sum of five thousand dollars or more shall be held by the said trustee in said sinking fund, the trustee shall, whenever requested in writing by the company, forthwith give notice by publication in a newspaper published in the City of New York, and a newspaper published in the City of San Francisco, for such time as it may deem advisable, that it will purchase and redeem out of said sinking fund, after deducting the expenses of said publication, bonds, to the extent of the cash available in said fund, at a price not exceeding par and accrued interest. And such bonds as may be purchased and redeemed by the trustee shall be forthwith canceled; and should none be offered, the trustee shall retain the moneys in said sinking fund at interest, until another like sum of five thousand dollars shall be paid into said fund, in which case the same proceedings shall be again taken as above set forth.

## Article Fourth

The company covenants and agrees to use the bonds herein provided, for the following purposes only:

To provide funds to extend and thoroughly complete, equip and maintain the canal and its branches; to erect a dam or dams in the Mokelumne River, and maintain the same; to pay and discharge the floating debt of said company, and to provide the necessary funds for the general expenses of the company.

And the trustee shall, from time to time, upon the joint order of the president and secretary of the company, making request therefor, issue and deliver to the persons named in said order, the bonds, or any of them herein provided for.

## Article Fifth

And the company does hereby covenant, promise and agree for itself, its successors and assigns, to and with the trustee and its successor or successors, that the said company will well and truly pay each and every of said bonds issued by it and secured by this mortgage, together with the semi-annual interest, at the rate of six per cent. per annum, at the times, in the manner, and at the places specified therein, without deduction for any cause.

And in case the company shall, for the space of six months, make default in payment of said semi-annual interest to become due on any, either, or the whole of said mortgage bonds, then after the expiration of said six months from the time it became due, and without demand or notice, at the election or option of the majority in interest of the holders of said bonds then issued and outstanding expressed in writing, the whole principal sum mentioned in each and all of said mortgage bonds then outstanding, shall forthwith become due and payable, and the lien an encumbrance hereby created for the security and payment thereof may at once be enforced.

## Article Sixth

It is further agreed in case of default in the payment of the semi-annual interest of the said bonds for the space of six months or of any tax or assessment for the same period, that the trustee and its successors are hereby expressly authorized and empowered, upon the request in writing of the owners or holders of the majority of said bonds then outstanding, or if the principal of the bonds shall be due, upon the request of the holders of a majority of the bonds outstanding, to enter into and upon, and to take actual possession of all the property, real and personal, and rights, franchises and privileges of the premises hereby conveyed, and each and every part thereof, and by themselves, or by their attorneys or agents, have, hold, use and enjoy the same, and from time to time make all repairs and replacements, and all useful alterations, additions and improvements thereto, as fully as the company might have done before such entry, and to collect and receive all tolls, incomes, rent, issues and profits of the same and of every part thereof. The trustee and its successor or successors shall and may, and hereby are expressly authorized and empowered on such default to sell at public auction, to the highest bidder, the entire property real and personal, rights, franchises and privileges herein conveyed. Said sale shall be held either in the City of Stockton or the City of San Francisco. At least two months' notice shall be given of the time, place and terms of said sale, by advertising the same in one or more newspapers of good circulation, in the City of San Francisco, and wherever else required by law, and continuing such advertisement at least once a week, until the time of sale; and the trustee may, at its discretion, adjourn said sale from time to time, giving reasonable notice of the time and place where it will take place, and as the attorney or attorneys in fact of the company, or its successors and assigns, shall have full power and authority to make, execute and deliver to the purchaser or purchasers thereof good, valid and sufficient deed or deeds, conveyance or conveyances, assign-



ments or transfers, in fee simple or otherwise, of the entire property herein conveyed, and all the rights, franchises and privileges of the company, or its successors or assigns, which conveyance or conveyances, transfer or deeds, shall vest in the purchaser or purchasers all the right, title, interest and estate whatsoever, reversionary, or in possession, or which they may be entitled to receive, have or hold of the company; and said sale shall be a complete and perpetual bar or estoppel, both in law and inequity, against the company, its successors and assigns, and all persons or parties lawfully claiming by, from or under it or them, in any wise or manner whatsoever, and the said company hereby covenants and agrees that neither this company, nor its successors, shall have or claim any advantage of any valuation, appraisement or extension.

The amount of the purchase money on said sales may be paid and satisfied in whole or in part by the outstanding mortgage bonds, and matured and unpaid coupons, or any of them secured hereby; and said bonds and coupons shall be received in whole or part payment and satisfaction by the trustee, its successor or successors, according to their value, to be ascertained and determined by the net amount arising from said sale, provided, however, that if during the pendency of such proceedings, or of any foreclosure proceedings for nonpayment of interest coupons, the said interest be paid, together with the expenses of the legal proceedings then taken, all foreclosure or other proceedings shall then terminate and be discontinued.

#### Article Seventh

Out of the moneys received from any tolls, income, rents, profits and earnings of said canal and premises or out of the proceeds of said sale, so to be made as aforesaid, or the sinking fund as above provided for, after first deducting the expenses, disbursements, costs, charges, and counsel fees, incurred in and about the conducting of said sale, or the working and operating said canal, including the compensation and commission of said trustee in and about the execution of this trust, and all expenses

of repairs, replacements, alterations, additions and improvements, and all payments for taxes, assessments, charges or liens on said premises, or any part thereof, the trustee shall, if the amount be sufficient for that purpose, pay said mortgage bonds, or so many of them as shall be outstanding and unpaid, together with all interest then due upon the same; and if the amount be insufficient, then it shall divide the same pro rata among the outstanding bonds, and the surplus of all such moneys or proceeds of sale, if any there be, shall be paid to the company or its successors or assigns.

#### Article Eighth

Nothing herein shall be construed as limiting the right of the trustee to apply to any competent court for a decree of foreclosure and sale under this indenture, or for the usual relief in such proceedings, and the said trustee, or its successors may in its discretion, so proceed.

#### Article Ninth

The said trustee shall be entitled to a reasonable compensation for its services rendered under the trusts herein created, and also to reimbursement for all expenses, legal or otherwise, necessarily incurred by it in administering the same, and all such compensation and expenses, are secured hereby.

In case it shall be required by the holders of bonds secured by this indenture to enforce any of their rights hereby secured, the said trustee shall not be required to incur any expense or liability in connection therewith, until satisfactorily indemnified therefor, and all powers in these presents conferred upon the trustee (except as otherwise herein specifically provided) shall be deemed discretionary, and it shall incur no liability in exercising or declining to exercise such discretionary powers, provided it acts in good faith in regard thereto.

#### Article Tenth

And it is further agreed that the trustee, or its successor, may appoint and employ, at the expense of the said company,

all such attorneys or other agents as may be necessary in the execution of any of the trusts herein declared, and shall not be answerable for the defaults or other misconduct or neglect of such attorneys, or other agents, unless chargeable with culpable negligence in their selection.

#### Article Eleventh

And it is further agreed, that in the case of the death, removal, resignation, incapacity, or insolvency of the trustee or its successor, or in case two-thirds in interest of the holders of outstanding bonds at any time so elect, a majority in interest of the outstanding bondholders may, by a writing under their hands and seals appoint and designate one or more competent persons or corporations to fill the vacancy so occurring in manner aforesaid; and until the bondholders make such selection, then the president of the company, with the consent in writing of the owners or holders of one-tenth of all of said bonds outstanding may apply to a judge of any court of competent jurisdiction, who shall appoint one or more persons to fill the vacancy until the bondholders make an appointment; and in either case the person or persons selected shall have and possess, and be vested with, the same rights and powers as a trustee or trustees, as he or they would have had or possessed or been vested with, had he or they been originally made a party or parties to this indenture, and shall perform said duties in all respects; and until such appointment shall be so made, in manner aforesaid, said remaining surviving, acting or competent trustee shall have full power and authority to execute each and all trusts hereby created.

In case at any time thereafter, two or more trustees should be appointed in the place of the one herein named, and there should thereafter become a vacancy by the death, resignation or removal of one or more of said trustees, the remaining trustee or trustees, until such time as another may be appointed shall perform all the duties of his trust, and during such time all

acts done by him shall be as valid as if performed by all the trustees.

#### Article Twelfth

And the company, for itself and its successors and assigns, hereby covenants and agrees for the consideration aforesaid, to execute and deliver any further deed or deeds to the trustee, its successor or successors, reasonable and necessary to accomplish the purpose and intent of this indenture, particularly for the conveyance of any right, interest or property acquired by said company subsequent to the date of this agreement.

#### Article Thirteenth

The company further agrees, that it will well and truly pay and discharge each and every tax, or assessment, which may, from time to time, be lawfully levied upon the said property or franchise, the lien of which might or could be held superior to the lien of this indenture, to the end that the priority of the lien created by this indenture may at all times be fully sustained.

#### Article Fourteenth

The trustee hereby accepts the trusts herein contained and undertakes and agrees to fulfill all the duties and obligations hereby imposed upon it in accordance with the true intent and meaning of this indenture.

#### Article Fifteenth

The said company, for itself, its successors and assigns, the above granted and bargained premises unto the said trustee, its successors and assigns, will forever warrant and defend against all lawful claims and demands whatsoever, against the same.

#### Article Sixteenth

Provided always, and this grant and conveyance is upon the express condition that upon the payment in full of such of said bonds, as shall have been issued and sold, and the interest due thereon and upon the surrender thereof to the company,

and due proof of such payment and surrender to the satisfaction of the trustee or its successor, or at any time before any of said bonds are sold and issued, on the demand in writing of said company for the cancellation of said deed of trust, then the estate, title and interest of the said trustee, or its successors, shall cease, determine and become void, and said trustee shall, upon the request of the company, its successors or assigns, duly execute and deliver such proper release or reconveyance as may be necessary for the purpose of revesting the record title to said property in the company, its successors or assigns, free from all liens, trusts or encumbrances hereby created.

In witness whereof, the said parties of the first and second parts have caused these presents to be sealed with their corporate seals and subscribed by their respective presidents, and attested by their respective secretaries, on the day and year first above written.

The word "trustee" having been first stricken out, and the word "company" inserted in lieu thereof in line nineteen (19) of page two (2) hereof.

Woodbridge Canal & Irrigation Company,  
[CORPORATE SEAL] By M. V. B. Watson, President.  
Attest: M. T. Moses, Secretary.

Atlantic Trust Company,  
[CORPORATE SEAL] By W. H. Male, President.  
Attest: J. S. Suydam, Secretary.

Signed, sealed and delivered by the above-named Woodbridge Canal & Irrigation Company in the presence of  
Lincoln Sonntag.

And by the above-named Atlantic Trust Company in the presence of  
Stanley W. Dexter.

State of California, City and County of San Francisco, ss.:

On this 17th day of July, 1891, before me, Lincoln Sonntag, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared M. V. B.

Watson, known to me to be the president of the corporation "Woodbridge Canal & Irrigation Company," that executed the within instrument, and M. T. Moses, known to me to be the secretary of the said corporation, and they each severally acknowledged to me that such corporation executed the same.

[NOTARIAL SEAL]

Lincoln Sonntag, Notary Public.

State of New York, City and County of New York, ss.:

On this 4th day of August, 1891, before me, Stanley W. Dexter, a notary public in and for said city and county, residing therein, duly commissioned and sworn, personally appeared W. H. Male, known to me to be the president of the corporation "Atlantic Trust Company," that executed the within instrument, and J. S. Suydam, known to me to be the secretary of the said corporation, and they each severally acknowledged to me that such corporation executed the same.

[NOTARIAL SEAL]

Stanley W. Dexter, Notary Public.

(Endorsed.) Recorded at request of Atlantic Trust Company, August 10, 1891, at 20 minutes past 2 o'clock p. m., in book "A," volume 74, page 361 of Deeds, San Joaquin County Records.

(Here follows Exhibit "B," Schedule of Properties.)

State of California, City and County of San Francisco, ss.:

Charles P. Eells, being duly sworn, deposes and says: That he is one of the attorneys for complainant, the Atlantic Trust Company, and makes this affidavit on its behalf; that said complainant has no officer or other agent in the State of California; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information or belief, and that as to those matters he believes it to be true.

Charles P. Eells.

Subscribed and sworn to before me this 3d day of October, 1894.

W. B. Beazley,

Commissioner United States Circuit Court,  
Northern District of California.

**Form No. 9****Complaint by Trustee of Bondholders for Receiver of Light and Power Company**

STATE OF MICHIGAN—THE CIRCUIT COURT FOR THE COUNTY OF  
GENESEE, IN CHANCERY

*To the Circuit Court for the County of Genesee, in Chancery:*

Complaining your orator, the Detroit Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan, trustee as hereinafter mentioned, respectfully shows unto the court:

**I**

Your orator respectfully represents that it is a corporation duly organized and incorporated under chapter 162 of the 1897 Compiled Laws of the State of Michigan and acts amendatory thereto, for the purpose of doing a general trust, deposit and security business as contemplated by the provisions of law governing trust, deposit and security companies; that it has been so organized and incorporated for upwards of ten years last past, having its principal place of business at the City of Detroit, Michigan.

**II**

Your orator further alleges that the Fenton Light & Power Company, one of the defendants herein named, is a corporation organized and existing under and by virtue of the laws of the State of Michigan; that said corporation was organized for the purpose of manufacturing and selling electricity for heating, lighting and power purposes in the Village of Fenton, Genesee County, Michigan; that said corporation was so organized and doing business on the 1st day of March, A. D. 1906, and had been so organized and doing business at Fenton, Genesee County, Michigan, for a long period of time prior thereto.

## III

Your orator further alleges that the Independent Power Company, another of the defendants herein named, is also a corporation organized and existing under and by virtue of the laws of the State of Michigan; that said corporation was organized for the purpose of manufacturing and selling electricity for heating, lighting and power purposes, and was and is doing business at the Village of Linden, Genesee County, Michigan, and at the Village of Holly, Oakland County, Michigan; that the Village of Holly is situated a few miles east of the Village of Fenton, and Linden is situate a few miles west of said Village of Fenton; that said corporation obtained from the Township of Fenton a franchise, granting to it the right to construct and maintain a cable for the transmission of electricity to, from and between the Village of Linden and Holly, and thence through or near the Village of Fenton; that said corporation is engaged in the same business as defendant corporation, the Fenton Light & Power Company, and is a competing company for the business at the Village of Fenton.

## IV

Your orator further represents that at a meeting of the stockholders of the Fenton Light & Power Company, legally held on or about April 9, 1906, pursuant to a regular and legal call for such purpose, and at a meeting of the board of directors of said corporation at or about the same date, it was determined by resolution duly adopted that the Fenton Light & Power Company should make and issue its first mortgage coupon bonds for the purpose of paying its then existing indebtedness, and making necessary and immediate extensions and betterments to its plant and property, and also to acquire additional property and make additional future extensions, to the aggregate amount of fifty thousand dollars. That said bonds should be numbered from one to seventy inclusive, those numbered from one to thirty inclusive should be of the denomi-



tion of one thousand dollars each and those numbered from thirty-one to seventy should be of the denomination of five hundred dollars each. That said bonds should bear date as of March 1, 1906, and be made payable on March 1, 1921, and to bear interest at the rate of five per cent. per annum, payable semi-annually, both principal and interest should be made payable at the office of your orator in the City of Detroit, Michigan. That thirty thousand dollars par value of said bonds should be issued to pay the then present indebtedness of said defendant corporation and to make immediate and necessary extensions to its lines and betterments to its property, and that the other twenty thousand dollars par value of said bonds should be issued from time to time to acquire additional property and make future extensions. That the payments of both the principal and interest of said bonds should be secured by a first mortgage upon all the property, franchises, right and earnings of said defendant corporation, to be executed and delivered to your orator, the Detroit Trust Company, as trustee for the holders and owners of such bonds, and the officers of said defendant corporation were duly authorized to make, execute, acknowledge, seal with the seal of said corporation, and deliver, for and on behalf of said corporation, said mortgage, to your orator in due and regular form, and also to make, execute and deliver the aforesaid bonds and coupons to be certified by your orator, all of which will more fully appear, reference being had to the records and files of said defendant corporation, which records and files will be produced and proven upon the trial of said cause.

## V

Your orator further represents that on or about March 1, 1906, the said Fenton Light & Power Company by its president and secretary, duly authorized as aforesaid so to do, did make, execute, sign, seal with its corporate seal, issue and deliver to your orator as such trustee, the bonds of said The Fenton Light & Power Company to the amount of fifty thousand

dollars, numbered from one to seventy inclusive, bearing date March 1, A. D. 1906, and in and by each of said bonds the said the Fenton Light & Power Company promised to pay to your orator, or to the bearer of said bonds the sum of fifty thousand dollars on the 1st day of March, A. D. 1921, together with interest thereon from the date of said bonds at the rate of five per cent, per annum, payable semi-annually, on the 1st days of March and September in each year, at the office of your orator in the City of Detroit, Michigan, on presentation or surrender of the coupons thereto appended as they should respectively become due, and it was recited in each of said bonds that it was one of the series of seventy bonds numbered from one to seventy inclusive of like tenor and date, amounting in the aggregate to the sum of fifty thousand dollars, bonds numbered from one to thirty inclusive being of the denomination of one thousand dollars each and amounting in the aggregate to thirty thousand dollars, and bonds numbered from thirty-one to seventy inclusive being of the denomination of five hundred dollars each and aggregating in amount twenty thousand dollars. It was also recited in each of said bonds that the payment of the principal and interest on said bonds was secured by a trust mortgage bearing date and executed as of the 1st day of March, A. D. 1906, executed and delivered by the Fenton Light & Power Company to your orator and duly recorded in the office of the register of deeds for the County of Genesee, Michigan, in liber 145 of mortgages on pages 283 to 296 inclusive, covering all of the property and assets, proceeds and effects of the Fenton Light & Power Company, and the income therefrom. It also recited that the interest on said bonds shall be a first charge and lien on all sums of money received by the Fenton Light & Power Company for municipal lighting, and that a proportionate part of the moneys so received from municipal lighting should be set apart each month as the same was payable for the purpose of paying interest on said bonds. Said bonds also recited that should default be made in the payment of the principal or

interest as the several coupons became due and payable, or should default be made in any of the covenants of said mortgage, that the principal and interest should all become due in the manner provided for in said mortgage. That each of said bonds had appended thereto interest coupons numbered with the same number as the bond to which it was appended, and that on each of said coupons was a promise by the said Fenton Light & Power Company to pay to the bearer thereof the amount stated therein on the date that said coupons respectively became due upon presentation and surrender thereof, at the office of your orator for the semi-annual interest due on such bond.

## VI

Your orator further represents that on or about the same time that said bonds and coupons were delivered the said the Fenton Light & Power Company, by its duly authorized president and secretary, did make, execute, sign, seal with its corporate seal, acknowledge and deliver to your orator as trustee, a certain indenture of mortgage bearing date as of the 1st day of March, A. D. 1906, and therein and thereby the said the Fenton Light & Power Company did, in order to secure the payment of all the moneys mentioned in said bonds and coupons as the same should fall due, and in consideration of the covenants and conditions in said mortgage contained, did grant, bargain, sell, transfer, alien and convey to your orator as trustee, its successors and assigns, forever, the following described property and assets, to wit: Beginning at the south line of Ellen Street ninety (90) feet east of LeRoy Street, thence south one hundred sixty (160) feet, thence east sixty (60) feet, thence north one hundred sixty (160) feet to Ellen Street, thence along the line of said Ellen Street sixty (60) feet west to place of beginning; also the right of a roadway in common sixteen (16) feet wide over and across block eighteen (18), which aforesaid description is adjacent and along the east line of the above-described parcel

of land; also the right of way for enclosed trench or flume through which the water from the mill pond may be conveyed to above-described parcel of land; also the right of connecting the said trench or flume at the dam or flume of the saw mill and conveying water to the above-described land; also the right of way for discharge of water or tail race over and across the portion of said block eighteen (18) extending west or south of said described land and the bed or main channel of the river; also the surplus water power required in the use of the said mill and grist mill, that is to say all the water not used in said mills; also conveying all engines, boilers, dynamos and electric appliances, including poles, fixtures, furnishings, wires, erected or to be erected; also all franchises owned by said first party whether from the Village of Fenton or private individuals. With all the buildings, machinery and appurtenances situate thereon and all the cables, wires, poles, conductors, transformers, lamps and other appliances used and owned by the Fenton Light & Power Company, and all franchises, licenses, contracts, agreements and leases now owned or hereafter acquired and all other property and assets, real and personal, all choses in action, all franchises, claims and everything which the said Fenton Light & Power Company now owns or may hereafter acquire, together with all the hereditaments and appurtenances to all the above-described property belonging or in any wise appertaining, and all the income rents, issues and profits of the said property, both present and future. To have and to hold the same unto your orator as trustee, its successors and assigns, for the use and benefit of the persons who should become holders of the bonds aforesaid. That said indenture of mortgage was upon the express condition that is the said the Fenton Light & Power Company should well and truly pay or cause to be paid to each and all of the holders of said bonds and coupons the interest upon said bonds and each of them, upon the presentation and surrender of said coupons as the same should respectively become due, and should well and truly pay or cause to be paid the principal of each of

said bonds as the same should become due, and should well and truly pay or cause to be paid the taxes and assessments assessed against the property mortgaged as the same should become due and payable, and should well and truly keep the property covered by said mortgage insured against loss or damage by fire, and pay or cause to be paid the insurance premiums thereon as they should respectively become due and should well and truly pay to your orator any taxes or insurance paid by it, together with the interest thereon, and should said mortgagor make no default in the covenants and agreements by it to be kept and performed, then such mortgage should cease and become null and void.

## VII

Your orator further represents that upon the execution and delivery of the bonds aforesaid and the mortgage aforesaid to your orator, it thereupon, as provided in said mortgage, certified the bonds numbered one to twenty inclusive aggregating in amount twenty thousand dollars, and bonds numbered thirty-one to fifty inclusive, aggregating in amount ten thousand dollars, and delivered the same to said defendant corporation as provided in said mortgage, and took its receipt therefor; that the remainder of said bonds have never been certified by your orator and now remain in your orator's possession and custody. These uncertified bonds are not a lien upon said mortgaged property. The Fenton Light & Power Company sold and delivered the thirty thousand dollars of certified bonds aforesaid to purchasers for a value, whereupon said bonds became a legal obligation against said defendant corporation secured by said mortgage.

## VIII

Your orator further represents that by the terms of said mortgage the Fenton Light & Power Company covenanted to punctually pay the interest on all outstanding bonds semi-annually and the principal as it should become due and payable

by the conditions of said mortgage and according to its terms; it further covenanted to deposit the interest with your orator before the time of payment thereof; it further covenanted to pay within forty days after the same should become due and payable, all taxes, assessments, rates, charges and all labor, mechanics, and other liens of every name and nature that should be levied or imposed upon said mortgaged property; it also covenanted to keep the said mortgaged premises insured against loss or damage by fire in an amount not less than the insured value of such property and to pay the insurance premiums thereon as the same should become due and payable; it also covenanted that all after-acquired property of every name and nature should immediately upon its acquisition and without further covenants, conveyances and assignments, become and be subject to the lien of said mortgage; it also covenanted to furnish to your orator annually on the 1st day of March of each year and at such other times as your orator should request, a statement showing the financial condition of said company and of the condition of its property; it was further provided in said bond and mortgage that the income from municipal lighting should be set apart each month as the same was paid for the express purpose of meeting the interest when it should become due; it further covenanted and agreed that should default be made in any of the aforesaid covenants or should the said Fenton Light & Power Company fail to faithfully observe and fulfill any of the requirements to be by it kept and fulfilled and should such default continue for a period of ninety days after due and proper notice or demand, then your orator might and upon the written request of the holders of a majority in amount of said bonds then outstanding should declare the whole amount due and payable forthwith.

## IX

Your orator further alleges that default has been made by the Fenton Light & Power Company, its successors and assigns,

in many of the covenants and conditions of said mortgage, viz.: Said Fenton Light & Power Company, its successors and assigns, have failed to set apart the income from municipal lighting with which to pay the interest when it became due; it has failed to deposit the interest upon all outstanding bonds with your orator before the same became due and payable; it has made default in the payment of interest due March 1, A. D. 1913, upon the outstanding bonds; it has made default in the payment of taxes upon said mortgaged property due December 1, A. D. 1912; it has made default by its failure to furnish to your orator a written statement showing its financial condition and the condition of the property annually or when requested by your orator; and it has failed to keep and fulfil the covenants and agreements by it to be kept and performed under and by the terms and conditions of said mortgage and such default has continued for more than ninety days (except as to the payment of such interest) after due and proper notice and demand, and your orator, by virtue of the authority contained in said mortgage and upon the written request of the holders of more than a majority in amount of all outstanding bonds does hereby and by these presents declare the principal and interest of all outstanding bonds due and payable forthwith.

## X

Your orator further shows unto the court that said mortgage was on or about the 23d day of August, A. D. 1906, recorded in the office of the register of deeds for Genesee County, Michigan, in liber 145 of mortgages on pages 283 to 296 inclusive, which said mortgage by reference to such records is made a part of this bill of complaint and which is in the possession of your orator ready to be produced and proved as the court shall direct.

## XI

Your orator further represents that on or about the 9th day of October, A. D. 1906, the Fenton Light & Power Com-

pany, by its duly authorized officers, by and with the consent of the holders of the thirty thousand dollars of outstanding bonds, and by and with the consent of your orator, made, executed, acknowledged and delivered to your orator a supplemental mortgage, which supplemental mortgage was, on the 15th day of October, A. D. 1906, recorded in the office of the register of deeds for Genesee County, Michigan, in liber 145 of mortgages at page 300. Said supplemental mortgage provided, among other things, for the payment, retirement and cancellation of bonds numbered one to five inclusive, aggregating in amount five thousand dollars, also for the payment of bonds numbered six to ten inclusive, by the payment of one thousand dollars each year for a period of five years commencing January 1, 1908. And your orator alleges that bonds numbered one to ten inclusive have been paid, redeemed and cancelled as provided in such supplemental mortgage, which supplemental mortgage is hereby made a part of this bill of complaint by reference to its record and is in the possession of your orator ready to be produced and proven as the court shall direct.

## XII

Your orator further represents that there is now due and unpaid upon the principal and interest of said bonds and coupons the sum of twenty thousand dollars upon the principal and the interest thereon at the rate of five per cent. per annum since September 1, A. D., 1912, amounting to seven hundred fifty (\$750) dollars computed to June 1, 1913; that no suit or proceeding has been commenced for the collection of such principal and interest by your orator or any of the holders of said bonds, although the payment of such interest and the unpaid taxes due December 1, 1912, has been demanded and more than ninety days have elapsed since the said taxes became due and payable and since notice to the Fenton Light & Power Company was given of the nonpayment thereof and demand was made for the payment of such taxes.



## XIII

Your orator further avers that said mortgage provides that in case of default by the Fenton Light & Power Company of any of the covenants, conditions and requirements by it to be kept, performed and fulfilled, then in such case your orator had the right to enter upon said mortgaged premises and take possession thereof and to operate the same, and dispose of such property as in said mortgage provided; said mortgage also provides that in such case your orator may also commence foreclosure suit in equity; and that it may in its discretion, and shall upon the request in writing of the holders of a majority in amount of said bonds, take any steps which it may deem necessary to protect the security of said bonds.

## XIV

Your orator further represents that a majority in amount of said bondholders have requested your orator, as such trustee, to take proceedings to foreclose said mortgage in order that the principal herein declared to be due, and the interest thereon may be paid and satisfied, and that your orator take such steps as it may deem necessary to protect the security of said bonds, and your orator files this bill of complaint as such trustee at the request of said bondholders and for the benefit of the holders of said bonds and coupons.

## XV

Your orator further represents that the defendant, the Independent Power Company, is now lawfully in possession of said mortgaged premises, and is operating and conducting the business of the Fenton Light & Power Company, collecting its moneys, rents and tolls, and neglects and refuses to account therefor. It neglects to pay the taxes on said mortgaged premises and the interest due on said bonds. It neglects to keep the machinery, transmission lines, lamps and equipment in reasonable repair, and neglects to properly care for said property. Said Independent Power Company is conducting a com-

peting business and is endeavoring to gain an undue and unlawful advantage of the Village of Fenton by permitting said mortgaged property to become depreciated and worthless and thereby acquire to itself the patronage of the village and its inhabitants without paying therefor. If said Independent Power Company is permitted to continue in the management and control of said mortgaged property it will become destroyed, worthless or of little value to the great damage and loss of said bondholders.

### XVI

Your orator further represents that on or about the first day of August, A. D. 1912, the stockholders of the Fenton Light & Power Company entered into an executory contract with one George C. Webber, agent and representative of the Independent Power Company, wherein and whereby said stockholders agreed to sell and assign to said George C. Webber all the stock of the Fenton Light & Power Company for and in consideration of the sum of ten thousand dollars, which said George C. Webber agreed to pay in cash on or about the first day of January, A. D. 1913; that on or about November 11, A. D. 1912, the same parties entered into a supplemental agreement, whereby said George C. Webber came into possession of said mortgaged property as of November 1, A. D. 1912, and the terms of payment for said stock were so changed that said George C. Webber agreed to pay therefor the sum of ten thousand dollars as follows: Two hundred fifty dollars upon the execution of said contract, and one hundred fifty dollars or more on the fifteenth day of each and every month thereafter until the whole of said purchase price was paid. It was provided in said supplemental and original agreement that said George C. Webber should pay the taxes assessed against the property and the interest on, and principal of said bonds when it became due; but the directors of the Fenton Light & Power Company have never executed any lease or conveyance of its property to the said George C. Webber or to his assigns, nor has said board of directors ever ratified or

confirmed the action of its stockholders. Your orator further charges, upon information and belief, that said George C. Webber subsequently assigned said contracts to the Detroit Construction Company, a corporation organized and existing under and by virtue of the laws of the State of Michigan, and that the said Detroit Construction Company then leased said mortgaged premises to the Independent Power Company aforesaid, and the Independent Power Company took possession of said mortgaged premises and have since operated the same as aforesaid. Your orator further alleges that the stockholders of the Fenton Light & Power Company still retain their stock and that said stock has never been assigned or transferred, nor have any payments for said stock been made, except the first payment of two hundred fifty dollars.

#### XVII

Your orator further alleges that the mortgages aforesaid provides that in case a foreclosure suit is instituted, your orator upon application to the court, shall be entitled to have a receiver appointed immediately and without notice to take charge of the property and assets covered by said mortgage, and to collect the rents, issues and proceeds therefrom.

#### XVIII

Your orator further represents that said mortgage provides that your orator shall be reimbursed for any and all reasonable disbursements by it made, also that it shall be paid a reasonable compensation for its services as such trustee and for the services rendered by its solicitors in the foreclosure of said mortgage or any and all other suits and proceedings by it instituted to protect the interests of said bondholders or otherwise, which sums shall be a further lien upon said mortgaged premises under said mortgage.

#### XIX

Your orator further avers that if said defendant, the Independent Power Company, is permitted to continue to manage

and control the plant and property of the Fenton Light & Power Company and to collect its bills, rents, income and tolls, it would work material injury to said bondholders, and said Independent Power Company, Detroit Construction Company and George C. Webber, their servants, agents and employees, should, by the order and injunction of this court, be temporarily and permanently enjoined and restrained from exercising in any manner any act of proprietorship or ownership over the property and assets of said Fenton Light & Power Company, and from collecting, receiving, or otherwise obtaining any of its moneys, rents or accounts due it for the sale of electricity, or other property belonging to said Fenton Light & Power Company and covered by said mortgage.

Your orator therefore prays the aid of this court as follows:

1. That the said defendant, the Fenton Light & Power Company corporation, the Independent Power Company corporation, the Detroit Construction Company corporation, and George C. Webber, may without oath, their answer under oath being hereby expressly waived, full, true, direct and perfect answer make to all and singular the matters herein stated and charged.

2. That the said defendants and each of them may come to a just and true account touching the amount due and owing to the holders of said outstanding bonds and coupons for principal and interest and secured by said mortgage, including the rents, profits and income collected by it or them while in the unlawful possession of said mortgaged property, and that the said defendants or some of them may be decreed to pay forthwith to your orator as such trustee, for the benefit of the holders of such bonds and coupons, the amount which shall be found to be due thereon, together with the interest thereon and your orator's reasonable costs and expenses in this behalf expended.

3. And that in default thereof that the said defendants, each and all of them, and all persons claiming or to claim from or under them may be forever barred and foreclosed

of and from all equity of redemption in and claim to the said mortgaged premises and each and every part or parcel thereof with the appurtenances.

4. And that all and singular said mortgaged property with appurtenances may be sold by the order and decree and under the direction of this court and the moneys arising from the sale thereof, so far as the same may be necessary, or so far as the same shall extend, be applied toward paying to your orator, as such trustee, the full amount of the moneys so found to be due as aforesaid and secured by the said indenture of mortgage, principal as well as interest, together with your orator's reasonable costs and charges, including compensation for its services as such trustee and the compensation for services of its solicitors.

5. And that on the coming in and confirmation of the report of such sale the said defendants and all persons claiming or to claim under them do forthwith surrender possession to the purchaser or purchasers at such sale of all personal property so sold, and that at the expiration of the time when the real estate so sold may, according to the statute in such case made and provided, be redeemed, the said defendants and all persons claiming or to claim under them or any of them, who shall have come into possession of the said mortgaged lands and real estate or any part thereof, during the pendency of this suit or during the time in which the same may by law be redeemed, deliver and yield up possession thereof, or so much thereof as shall not have been redeemed, to whomsoever shall have become the purchaser or purchasers thereof at such sale on the production to it, him, her or them, of the deed or deeds executed by the circuit court commissioner or other officer of this court pursuant to such sale, and a certified copy of the order confirming the report of such sale, after the said order has become absolute, and such deed has become operative unless such real estate shall have been sooner redeemed according to law.

6. That said defendant, or some of them pay to your orator as such trustee any balance that shall remain of the said prin-

principal and interest if the sale of such mortgaged property aforesaid shall fail to produce a sufficient sum to pay the whole of such principal and interest and the costs of this suit, and the costs and expenses of such sale, and that your orator may have execution therefor.

7. And that in the meantime and during the pendency of this suit that some proper persons be appointed by this court as receiver with the usual powers and under the usual instructions, to receive and take into his custody and possession, all and singular the said mortgaged property and therewith carry on and continue the business of the said Fenton Light & Power Company for the benefit of the said holders of the said bonds and coupons and of your orator as such trustee under the direction of said court;

Also that the said defendants and each and every of them, their servants, agents and employees be, by the order and injunction of this court, temporarily and permanently enjoined and restrained from exercising in any manner any act of proprietorship or ownership over the property and assets of the Fenton Light & Power Company covered by said mortgage, and from collecting, receiving or otherwise obtaining any of its moneys, rents or accounts due it for the sale of electricity or other property belonging to said Fenton Light & Power Company and covered by said mortgage.

9. And that your orator have such other and further relief in the premises as shall be agreeable to equity and good conscience.

10. And that a subpoena be issued out of and under the seal of this court directed to said defendants according to the usual practice of said court.

And your orator will ever pray.

Detroit Trust Co., Trustee,

By Joseph A. Bower, Assistant Secretary.

Brennan, Cook & Gundry, Solicitors for Complainants.

(The above bill of complaint was duly verified on the 28th day of May, 1913.)

**Form No. 10****Petition by Trustee of Bondholders for Receiver of Building Company**

(Form under Civil Code Procedure)

The Union Savings Bank & Trust Co., a corporation under the laws of Ohio, Trustee, Plaintiff,

vs.

The Pike Building Company, a corporation under the laws of Ohio, Defendant.

*Petition\**

Plaintiff says that it is a corporation organized under the laws of Ohio, and is doing business as a savings bank and trust company at Cincinnati in the State of Ohio and is authorized by the statutes of Ohio to act as trustee as hereinafter mentioned and that the defendant, the Pike Building Company is a corporation organized under the laws of the State of Ohio, and having its place of business at Cincinnati in the State of Ohio.

Plaintiff says that on or about the 1st day of July, A. D. 1895, the defendant corporation acting through its board of directors adopted a resolution authorizing an issue of negotiable coupon bonds to the amount of three hundred thousand (\$300,000) dollars and of the following denominations, that is to say, five hundred and fifty (550) coupon bonds, of which two hundred and fifty (250), numbered from 1 to 250, inclusive, are each for one thousand (\$1,000) dollars; fifty (50), numbered from 251 to 300, inclusive, are each for the sum of five hundred (\$500) dollars; and two and fifty (250), numbered from 301 to 550, inclusive, are each for the sum of one hundred (\$100) dollars.

All the bonds provided for in said resolution were to be dated July 1, 1895, and to become due July 1, 1905, and to

\* Copy of petition in Case No. 52,193, Superior Court of Cincinnati, Ohio.

bear interest at (5%) per cent. per annum, payable semi-annually, on the first days of January and July of each and every year during the life of the bonds evidenced by interest coupons attached, the principal and interest of said bonds to be payable at the banking house of the Union Savings Bank & Trust Company in Cincinnati, Ohio, to the holders thereof, the said bonds to be transferable upon delivery.

That thereafter and in accordance with the provisions of the resolution of its board of directors, the defendant corporation did cause to be signed by its president and secretary bonds of the character hereinbefore described, bearing date July 1, 1895, to the amount of three hundred thousand (\$300,000) dollars, and in the denomination specified in the resolution of its board of directors and did cause to be attached to each of said bonds the corporate seal of said company and that there are now outstanding of said bonds the sum of two hundred and seventy-five thousand six hundred (\$275,600) dollars, which were issued and have become obligatory and which have become a valid and subsisting lien by virtue of the mortgage hereinafter set forth against the real estate hereinafter described, the remainder of said authorized issue of bonds amounting to twenty-four thousand four hundred (\$24,400) dollars have not been issued and the said bonds have never become obligatory.

That save and except the number and denomination each and every of said bonds is in the form following, to wit:

(Copy of bond.)

That at the time of their execution, there was attached to and made a part of each of said bonds a series of interest coupons numbered from one (1) to twenty (20) inclusive, attested by the facsimile signature of Lewis H. Utz, secretary of the Pike Building Company and payable respectively on the first days of January and July of each and every year during the life of said bonds, and each of said coupons being for a semi-annual installment of interest, each coupon on every bond for one thousand dollars, being in the sum of twenty-five dollars, on every bond for five hundred dollars being in



the sum of twelve and a half dollars and on every bond for one hundred dollars, being in the sum of two and one-half dollars, and, excepting the amount and date of payment each of said coupons in every of said bonds being in the words and figures following, to wit:

(Copy of interest coupon.)

• That each and every bond issued by the defendant corporation in pursuance of the aforesaid resolution has endorsed thereon a certificate of the trustee, of which the following is a copy, to wit:

(Copy of endorsement of trustee.)

This plaintiff further says that to secure the payment of said bonds and the interest thereon without preference or priority among the holders thereof, the defendant corporation, on July 1, 1895, being thereunto duly authorized by resolution of its board of directors, through its president and secretary and under the seal of said corporation executed and delivered to this plaintiff, as trustee for the holders of said bonds, its certain mortgage deed of said date, and did thereby convey unto this plaintiff, as trustee aforesaid, and to its successors and assigns forever the following described estate:

(Describe real estate.)

Plaintiff further says that on the 24th day of December, A. D., at four o'clock p. m., the said mortgage deed was delivered to the recorder of Hamilton County for record and was by him thereafter duly recorded in book 713, page 377 of the mortgage records of said county, and a copy of said mortgage is hereto attached and made a part hereof and marked exhibit "A."

Plaintiff further says that said mortgage deed contained a condition therein written as follows:

"Provided nevertheless, that if said grantor shall cause to be duly paid all the said bonds with interest thereon and duly perform its several covenants herein contained then this indenture and every part thereof shall be discharged and duly released by said trustee for its successors or assigns by proper instruments of release and reconveyance and until such de-

fault said grantor shall hold, occupy and enjoy the premises hereby conveyed as fully as though this mortgage had not been made."

Plaintiff further says that the said mortgage deed hereinbefore mentioned to the Union Savings Bank & Trust Company, its successors and assigns forever was subject to certain conditions and upon certain trusts therein recited and declared and among others the following:

"If the grantor shall fail to pay the interest or principal of any of said bonds or any part thereof when the same shall be due and payable, then after six months from said default the principal of any bonds so in default shall be at the option of the holder, become due and payable, and the trustee, upon written request of the holders of three-fourths of said bonds shall declare the principal of all of said bonds due."

"In case of such default upon the written request by the holders of three-fourths of all of said bonds said trustee should it deem it for the best interests of the parties, may enter judicial proceedings for foreclosure of this mortgage and sale of said property or any part thereof for the payment of said bonds and interest.

"All requests of bondholders of the trustee to take any action provided for herein shall be signed and acknowledged before an officer authorized to take acknowledgments of deeds and shall be accompanied by evidence satisfactory to the trustees of the ownership of said signer of the number of bonds stated."

The plaintiff further says that the grantor has failed to pay the interest on more than \$225,000 of said bonds which was due and payable July 1, 1901, and more than six months have elapsed since said default occurred, nor has any interest been paid on any of said \$225,000 of bonds since July 14, 1901, payment of all of which interest has been demanded at the banking house of this plaintiff, the place of payment named in said bonds and coupons and mortgage.

Plaintiff further says that it has been notified in writing that the holders of more than \$225,000 of said bonds have

under the provisions of said mortgage exercised their option and declared the principal of said bonds to be due and payable and payment of said bonds and coupons has been demanded of said defendant corporation and said Pike Building Company has failed and refused to pay, and still refuses to pay, said interest or any part thereof or said principal or any part thereof.

Plaintiff further says that it has been requested in the manner set forth in said mortgage in writing, by the holders of more than three-fourths of the entire authorized issue of said bonds to declare the principal of all of said bonds due.

Plaintiff further says that it has been requested in writing in the manner set forth in said mortgage by the holders of more than three-fourths of the entire authorized issue of said bonds to enter judicial proceedings for the foreclosure of this mortgage and the sale of the mortgaged property for the payment of said bonds and interest.

The plaintiff further says that in pursuance of said request in writing of said bondholders it did on the 8th day of June, 1902, declare the principal of all of said bonds due.

This plaintiff says that by reason of the premises the said mortgage deed has become absolute and plaintiff as trustee for the bondholders is entitled to have the same foreclosed.

The plaintiff says that it deems it for the best interests of the parties to enter judicial proceedings for the foreclosure of said mortgage and sale of said property for the payment of said bonds and interest and now brings this action for that purpose.

Plaintiff further represents to the court that the property conveyed to it as trustee, for the security of the bonds outstanding, is a perpetual leasehold of great value because of its location in the center of the best business square of Fourth Street, Cincinnati.

That prior to February 26, this year, the defendant derived in gross rentals from the improvements in the mortgaged premises above seventy thousand (\$70,000) dollars per annum.

That on February 26 all the improvements on that portion

of said premises north of Baker Street were totally destroyed by fire and the improvements on that portion of the premises situate on the south side of Baker Street were partially destroyed by fire.

That there is now no income whatever from any portion of the mortgaged premises.

That the defendant corporation is bounden under its lease among other things, for the payment of ground rent amounting to twenty-two thousand five hundred (\$22,500) dollars annually and in addition thereto the taxes assessed against said property which for the year 1902 amounted to ten thousand seven hundred and eighty-three dollars and thirty-four cents (\$10,783.34).

Plaintiff further says that since the destruction of the improvements on February 26 last, the fixed charges upon said mortgaged premises now amount to over two thousand five hundred dollars (\$2,500) per month, exclusive of the interest of the bonds secured by the within mortgage.

Plaintiff further says that the defendant corporation has little or no other assets or property available for the payment of these fixed charges as aforesaid and for the satisfaction of the claims of the bondholders.

That certain of the bondholders in order to protect the lien of all the bondholders upon the leasehold security have been obliged to pay to the owners of the fee over four thousand (\$4,000) dollars of ground rent, due and payable on March 16, 1903, which the mortgagor was unable to pay and said paying bondholders claim to be subrogated for the amounts so paid by them respectively.

The plaintiff further says that under the terms of the lease from the heirs of S. N. Pike, deceased, the money derived from insurance on the improvements on said premises must be applied and used for the restoration of the building on said leased premises and can not be used for the liquidation or payment of the bonds secured by the mortgage on the leasehold. That the lease required that one hundred and sixty-five thousand (\$165,000) dollars of insurance should be kept

up by the lessee and that on February 26 when the buildings were destroyed as aforesaid there was one hundred and sixty-two thousand five hundred (\$162,500) dollars of insurance then in force on said improvements.

Wherefore the plaintiff prays the court may determine the amount, both of principal and interest, due upon the bonds secured by the within-described mortgage, that said mortgage deed may be foreclosed, the said premises ordered to be sold, and the proceeds applied to reimbursing the bondholders who have heretofore advanced or who may hereafter advance for the protection of said bonds, money for the payment of ground rents, taxes and other fixed charges, to prevent the forfeiture of said lease, to the satisfaction of the principal and interest of said bonds, that the holders of said bonds be directed under proper notice from this court to present them for payment and to make orders in the premises as may be just and equitable.

That a receiver be appointed to take charge of said mortgaged premises and all the assets of the defendant corporation, to collect any unpaid rents due to the defendant corporation and to take charge of the building on the mortgaged premises situate on the south side of Baker Street, rent the same, collect the rents and apply the moneys coming into his hands to the liquidation of the charges upon the mortgaged premises, and under the order of the court to provide means for the protection of the leasehold against forfeiture until a sale of the same can be obtained and for all proper relief to which the plaintiff in equity and good conscience may be entitled.

The Union Savings Bank & Trust Company,

By ———, Attorneys for Plaintiff.

State of Ohio, Hamilton County, ss.:

—— being duly sworn says that he is the vice-president of the Union Savings Bank & Trust Company, the plaintiff in the foregoing action, and that the matters stated in the foregoing petition are true as he verily believes.

——, Notary Public in and for Hamilton County, Ohio.

**Form No. 11****Complaint by Trustee of Bondholders for Receiver of  
Railway Company**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION  
No. 105. IN EQUITY

United States Mortgage and Trust Company, as Trustee under  
the First Mortgage of The Cincinnati, Dayton & Ironton  
Railroad Company, Complainant,

vs.

The Cincinnati, Hamilton & Dayton Railway Company,  
Bankers Trust Company, and Central Trust Company  
of New York, Defendants.

*Bill of Complaint*

*To the Honorable, the Judges of the District Court of the  
United States, for the Southern District of Ohio, Western  
Division:*

United States Mortgage and Trust Company, as trustee, a corporation organized and existing under the laws of the State of New York, and a citizen and resident of said state, brings this, its bill of complaint, against the Cincinnati, Hamilton & Dayton Railway Company, a consolidated corporation organized and existing under the laws of the State of Ohio, and a citizen and resident of said state; Bankers Trust Company, a corporation organized and existing under the laws of the State of New York and a citizen and resident of said state; and Central Trust Company of New York, a corporation organized and existing under the laws of the State of New York and a citizen and resident of said state, and thereupon your orator complains and alleges as follows:

First. That your orator, United States Mortgage and Trust Company, at all the times hereinafter mentioned was and still is a corporation organized and existing under the laws of the

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State of New York, a citizen and a resident of said state, and an inhabitant of the Southern District of New York, and that at all the times hereinafter mentioned your orator was, and now is duly authorized and empowered under the terms of its charter to take and hold the property conveyed, transferred and assigned upon the trusts hereinafter stated, and to execute and perform the duties imposed upon it under and by virtue of the terms and provisions of the first mortgage hereinafter mentioned of the Cincinnati, Dayton & Ironton Railroad Company (hereinafter for brevity termed the "Ironton Company").

Second. That the defendant, the Cincinnati, Hamilton & Dayton Railway Company (hereinafter for brevity called the "Consolidated Company") is a consolidated corporation organized and existing under the laws of the State of Ohio and a citizen and resident of said State of Ohio, and an inhabitant of the Southern District of Ohio, Western Division.

Third. That at all the times hereinafter mentioned, the defendant, Bankers Trust Company, was and still is a corporation organized and existing under the laws of the State of New York, and a citizen and resident of said state and an inhabitant of the Southern District of New York, and is the trustee named in and acting under the first and refunding mortgage of the defendant Consolidated Company, dated July 1, 1909.

That at all the times hereinafter mentioned, the defendant, Central Trust Company of New York, was and still is a corporation organized and existing under the laws of the State of New York, and a citizen and resident of said state and an inhabitant of the Southern District of New York, and is the trustee named in and acting under the general mortgage of the defendant Consolidated Company, dated July 1, 1909.

Fourth. That this suit is brought to foreclose the mortgage and deed of trust to your orator, as trustee, hereinafter mentioned, and that the ground upon which the jurisdiction of this court depends in this suit is that the railroads and other property subject to the said mortgage and deed of trust are now in the possession of this honorable court through its receivers appointed, all as hereinafter more particularly set forth.

That the amount in controversy in this suit, exclusive of interest, costs and expenses is in excess of the sum of five thousand dollars (\$5,000).

Fifth. That heretofore and on or about May 1, 1891, the Ironton Company, in the due exercise of the powers and authority in that behalf possessed, due corporate action having first been had on the part of its board of directors and stockholders, and it being thereunto duly authorized by law, for the purpose of making part payment of the purchase price of its railroad and other property, and for the purpose of raising the necessary means to improve such railroad property and equipment for the uses and purposes for which they were or might be employed, and completing or extending its road, constructing branch roads, laying double or additional tracks, increasing its machinery or rolling stock, building depots or shops, or for any of said purposes, resolved to issue its bonds (hereinafter termed "first mortgage bonds") to the aggregate amount of three million five hundred thousand dollars (\$3,500,000), to consist of three thousand five hundred (3,500) bonds numbered from 1 to 3,500, bearing date May 1, 1891, to mature May 1, 1941, and to bear interest from May 1, 1891, at the rate of five per cent. (5%) per annum payable semi-annually on the first days of May and November in each year.

Sixth. That on or about May 1, 1891, the Ironton Company, pursuant to due and lawful authority and due corporate action on the part of its board of directors and of its stockholders and in order to secure the payment of the principal and interest of the first mortgage bonds when the same should become due and payable, and for other purposes therein set forth, executed and delivered to the Central Trust Company of New York, as trustee, its first mortgage bearing date May 1, 1891, and therein granted, bargained, sold, released, conveyed, assigned, transferred and set over unto said Central Trust Company of New York, as trustee, its successors and assigns, the following described property, speaking to the extent



of this paragraph sixth, as of the date of the execution and delivery of said first mortgage:

All that portion of the line of railway formerly of the Dayton, Fort Wayne & Chicago Railway Company, in whole or in part, within the Counties of Montgomery, Greene, Fayette, Ross, Vinton, Jackson, Gallia and Lawrence, in the State of Ohio, beginning at or near the Third Street station in Dayton, Ohio; thence running in a southeasterly direction through Xenia and Jamestown in Greene County, Washington Court House in Fayette County, Chillicothe in Ross County, Vinton County, over the line of railway belonging to the Baltimore & Ohio Southwestern Railroad Company, a distance of about seven and one-half miles under a temporary contract of rental, through Jackson County to Wellston in said county, through Gallia County and Lawrence County to the Town of Deans in said last-named county (with a connection at said point with the Ironton Railroad Company running to Ironton, over which line to Ironton it has a temporary rental contract), together with all the property of a corporate nature or ownership of every kind belonging to the said the Dayton, Fort Wayne & Chicago Railway Company, owned or used by the Ironton Company in constructing, managing or operating its road, including all property, real and personal, together with all the rolling stock, equipments, locomotives, at any time owned or acquired by it or by its constituent companies or predecessors for constructing, repairing, operating, replacing or maintaining the portion of said road so conveyed, and all its real estate, rights of way, roadbeds and the entire superstructures thereof, and track at any time placed thereon, and all stations, depots, shops, yards and other grounds at any time used in connection therewith, including all gravel pits in Greene, Ross and other counties; and all steel and iron rails, ties, railways, sidings, switches, bridges, fences, turntables, watertanks, viaducts, freight houses, car and engine houses, machine shops and all other structures, buildings and fixtures whatsoever; and all tools, implements, machinery, fuel, furniture, fixtures, materials

and supplies of the said the Dayton, Fort Wayne & Chicago Railway Company, at any time owned or acquired by it or its constituent companies or predecessors for constructing, repairing, operating, replacing or maintaining the portion of the road so conveyed; also all the rights formerly belonging to the Dayton, Fort Wayne & Chicago Railway Company under the aforesaid permanent or temporary rental contracts to run over the said lines of railroad hereinbefore referred to; also all the rights, franchises, privileges, immunities and easements, and all leases, leaseholds, rights of use of other railroads aforesaid formerly belonging to the said the Dayton, Fort Wayne & Chicago Railway Company and its constituent companies, including all corporate franchises connected with the line of railway and property herein conveyed, or by any branches or extensions thereof, and also all rights, privileges and franchises, lands, roadbeds, rights of way, branches, extensions, betterments, improvements, buildings, structures, switches, rails, ties, bridges, fences, turntables, locomotives, cars, machinery, equipment, supplies and all other property of whatever nature, real or personal, which may at any time or times hereafter be acquired or owned by the Ironton Company.

Also the following real estate being part of Military Survey number twenty-two hundred and forty-three (2243) in the name of W. and A. Lewis, beginning at a stake in Shawnee River, near the Columbus & Xenia Railroad, and in the center of Morris Street, at a stake about seventy-three (73) feet from and in the east abutment of the railroad bridge over said run; thence up said run south seventeen (17) degrees thirty (30) minutes, east two hundred and ninety-seven (297) feet, to a stake in said run and in the center of Williams Street; thence with the center of Williams Street: thence with the center of Williams Street north eighty-one (81) degrees, west one hundred and fifty (150) feet, to the center of Petham Street, near the mineral springs; thence with the center of said street north thirty-three (33) degrees, west one hundred and twenty-seven (127) feet, to a stake in the

Wilmington road; thence with the said road, north sixteen and one-half ( $16\frac{1}{2}$ ) degrees, east one hundred and ninety-seven (197) feet, to a stake at the center of and at the end of Main Street; thence with the center of said street, north one (1) degree, eighty-eight (88) feet to the beginning, containing about 92/100 acres in Greene County and City of Xenia.

Also the real estate in the City of Xenia, Greene County, Ohio, purchased by the said the Dayton & Ironton Railway Company from Lester Arnold by deed of date of May 21, 1887, and recorded in Greene County, Ohio, in Records of Deeds, volume 73, page 177, and which is specially covered by the mortgage of Lester Arnold, containing 3-28/100 acres.

Together with the reversions, remainders, tolls, incomes, rents, issues and profits of the above-described property and premises, and also all the estate, right, title, interest and claim, as well in law as in equity, of the Ironton Company of, in and to the said premises, and every part thereof, with the appurtenances.

Also all the rolling stock and equipment then owned or possessed or thereafter acquired by the Ironton Company, and all other premises, properties, rights, interests, franchises, revenues, tolls, incomes, immunities, privileges and other things then owned or thereafter acquired by the Ironton Company.

Seventh. All and singular said premises, rights, interests, franchises, revenues, tolls, incomes, immunities, privileges, and other things were in and by said first mortgage granted, bargained, sold, leased, conveyed, assigned, transferred, pledged and set over unto said Central Trust Company of New York, as trustee, and to its successors and assigns forever, in trust, nevertheless, for the equal pro rata benefit and security of all persons, firms, and corporations which should become the owners or lawful holders of any of said first mortgage bonds or of the coupons appertaining thereto, without any preference or priority of one bond over the other by reason of priority in the time of issue or negotiation thereof, or otherwise,

upon the trusts, conditions, covenants and agreements set forth in said first mortgage.

A true copy of said first mortgage is annexed to this bill of complaint and marked "Exhibit A," and your orator prays leave that said copy of said mortgage may be taken in all respects as if the same were fully and completely set forth in the body of this bill of complaint.

That on or about May 1, 1891, the Ironton Company, pursuant to due and lawful authority, and due corporate action on the part of its board of directors and of its stockholders, executed and delivered to Central Trust Company of New York, as trustee, its indenture, dated May 1, 1891, supplemental to said first mortgage.

A true copy of said supplemental indenture is annexed to this bill of complaint marked "Exhibit B," and your orator prays leave that said copy of said supplemental indenture may be taken in all respects as if the same were fully and completely set forth in the body of this bill of complaint. The words "first mortgage" whenever hereinafter used shall include supplemental indenture.

Eighth. That said first mortgage was duly executed, acknowledged and delivered in all respect in conformity with law, and said Central Trust Company of New York accepted the trust created in and by said first mortgage before the record of the same and said first mortgage was thereafter duly recorded in every office in which it was required by law to be so recorded and in every county in which the lines of railroad and other property of the Ironton Company covered by said first mortgage were or are situated or located.

Ninth. That on or about June 15, 1916, said Central Trust Company of New York resigned as trustee under said first mortgage, and on or about June 16, 1916, your orator was appointed successor trustee thereunder and on or about June 17, 1916, your orator accepted the trusts created by said first mortgage and is now acting as trustee thereunder. That said resignation, appointment and acceptance all took place in

accordance with the provisions of said first mortgage, having particular reference to article twelfth thereof. That on or about June 19, 1916, said Central Trust Company of New York made, executed and delivered to your orator an instrument in writing conveying, assigning, transferring and setting over unto your orator, its successor and successors, all the estates, trusts, rights, powers, elections and duties of the Central Trust Company of New York, as trustee in and to the trust and trust estate created by said first mortgage. That said instrument was thereafter duly recorded in every office in which said first mortgage had been recorded.

Tenth. That, as shown by the records of said Central Trust Company of New York and as your orator is credibly informed and believes of said first mortgage bonds authorized as aforesaid, three million five hundred thousand dollars (\$3,500,000) face amount thereof bearing interest at the rate of five per cent. (5%) per annum were duly executed by the Ironton Company as provided in said first mortgage, were duly authenticated by the endorsement thereon of the certificate of the Central Trust Company of New York as trustee and were duly issued, negotiated and sold. All of said first mortgage bonds so authenticated and delivered as aforesaid are in the hands of divers persons, who are bona fide holders thereof as purchasers for value, and are outstanding, valid and subsisting obligations of the Ironton Company in accordance with their terms and of the Consolidated Company as hereinafter set forth.

Eleventh. That heretofore and on or about July 12, 1895, the defendant Consolidated Company was formed under the laws of the State of Ohio by the consolidation of the Cincinnati, Hamilton & Dayton Railroad Company, a corporation organized and existing under the laws of the State of Ohio, the Cincinnati, Dayton Chicago Railroad Company, a corporation organized and existing under the laws of the State of Ohio, and the defendant Ironton Company. By such consolidation said Consolidated Company duly acquired the right,

title and interest of the defendant Ironton Company in the property and rights covered by said first mortgage and duly assumed the payment of both principal and interest of the three million five hundred thousand dollars (\$3,500,000) of first mortgage bonds of the defendant Ironton Company authenticated and delivered as aforesaid. By reason of said consolidation and the terms thereof, the defendant Consolidated Company became and is liable to perform and observe all the covenants and agreements in said first mortgage contained to be performed and observed by the Ironton Company and as well to pay the principal of and interest on said first mortgage bonds in accordance with their terms and as and when the same respectively mature.

Twelfth. That since the date of execution and delivery of the first mortgage of the Ironton Company as aforesaid, the Ironton Company and the Consolidated Company have from time to time acquired certain other property (the particular character and description of which is at present unknown to your orator) which has become subject to the lien of the first mortgage and that for the proper protection and enforcement of the rights of your orator and the holders of the first mortgage bonds it is necessary for the Consolidated Company to account to your orator in this suit for all property owned by the Ironton Company at the date of the execution and delivery of the first mortgage and for all property subsequently acquired by the Ironton Company and the Consolidated Company in order that the property or so much thereof as may be subject to the lien of the first mortgage may be so declared and decreed by this honorable court.

Thirteenth. That on or about July 2, 1914, this court under a bill of complaint in equity filed by Bankers Trust Company, as trustee under the first and refunding mortgage of the Consolidated Company, dated July 1, 1909, against the Consolidated Company in the District Court of the United States for the Southern District of Ohio, Western Division, by an order dated July 2, 1914, appointed Judson Harmon and Rufus B.

Smith receivers of all and singular the railroads, lands, property, assets, rights and franchises of the Consolidated Company in said order mentioned including the property subject to the lien of first mortgage. That on or about July 2, 1914, said Judson Harmon and Rufus B. Smith duly qualified as such receivers, entered into possession of such property and are still in possession thereof under said order.

Fourteenth. That on or about November 1, 1914, default was made in the payment of the installment of interest which fell due upon said first mortgage bonds on that date. That certain of the coupons due November 1, 1914, were duly presented for payment at the place of payment therein specified and payment thereof was duly demanded. Said demand was made on or about the day that said installment of interest fell due and at the same time an offer was made to surrent the coupons representing the interest then due upon payment of the sum thereon but payment of the said installment of interest was refused and neither on November 1, 1914, nor at any other time did the Ironton Company or the Consolidated Company or anyone else on behalf of either thereof or otherwise provide at the place where the instalment of interest was payable or elsewhere any funds with which to pay the same and no part of said instalment of interest has been paid.

Fifteenth. That like defaults were made in respect of the payment of installments of interest which fell due May 1, 1915, and November 1, 1915, upon all the first mortgage bonds issued and outstanding. That said defaults and each of them still continue although demand was duly made at the place of payment of such installments of interest. That the amount of each of said installments of interest in default as aforesaid is the sum of eighty-seven thousand five hundred dollars (\$87,500).

Sixteenth. That on or about December 16, 1915, default having been made in the payment of the installment of interest on said first mortgage bonds as aforesaid and such default having continued for a period of four months and upwards

after the maturity of said interest (other than the interest which matured November 1, 1915) and payment of said installments of interest having been duly demanded, the Central Trust Company of New York, as trustee, did by notice in writing which was duly served on the defendant Consolidated Company, duly declare the principal of all said first mortgage bonds immediately due and payable. That no part of the principal of said first mortgage bonds has been paid and the whole amount thereof amounting to three million five hundred thousand dollars (\$3,500,000) and interest is now due, owing and unpaid by the defendant Consolidated Company.

Seventeenth. That the defendant Consolidated Company is insolvent and wholly unable to pay its debts and obligations; its financial affairs are in an embarrassed condition, and all the railroad property of the defendant Consolidated Company within the jurisdiction of this honorable court, including the railroad property covered by the first mortgage, is now in the possession of receivers appointed by this court as hereinbefore set forth. The earnings and income of the defendant Consolidated Company and of said receivers are insufficient to pay the operating expenses of the defendant Consolidated Company, its taxes and fixed charges.

Your orator as trustee under the first mortgage can not execute or perform the trusts therein set forth or protect the rights and interests of the holders of the first mortgage bonds without the aid and interposition of this honorable court sitting in equity and without a judicial sale of all the mortgaged property, premises and franchises covered by the first mortgage.

Eighteenth. That the defendants, and each of them have or claim to have some interest or lien upon the railroad, property and franchises, or some part thereof subject to the first mortgage, of which foreclosure is sought in this action, which interest or lien, if any such there is, is subsequent to the right, title and interest of your orator therein.



Nineteenth. That no proceedings have been had at law or in equity for the collection of the debt secured by the first mortgage save this suit.

That your orator is without adequate remedy at law.

WHEREFORE, your orator, in view of the premises, seeks the aid of this honorable court in equity where alone adequate relief can be administered in matters of this nature, and prays as follows:

1. That the first mortgage made by the Cincinnati, Dayton & Ironton Railroad Company bearing date May 1, 1891, may be foreclosed;

2. That an account may be taken and had of all the property subject to the lien of said first mortgage; that said first mortgage may be decreed to be a valid lien upon the railroad, property and franchises covered thereby and therein mentioned and described, together with all additional property subject thereto; that the amount due and unpaid upon the first mortgage bonds for principal and interest together with interest and the amount of such principal and interest may be determined and that the rights of the several holders of the first mortgage bonds and coupons may be ascertained and determined;

3. That the defendant, the Cincinnati, Hamilton & Dayton Railway Company, be adjudged to pay the amount so found to be due and owing upon said bonds and coupons, together with the costs and expenses of this action, including a reasonable compensation for counsel and a proper sum as compensation for services rendered and disbursements made by your orator as trustee, as aforesaid, and in default of the payment of the sum so found to be due and so adjudged to be paid within a time to be limited, it may be decreed that the defendants and each of them, and all persons claiming under them or any of them, any interest in and to the mortgaged property aforesaid subject to the lien of the first mortgage be absolutely barred and foreclosed of and from all right or equity, of redemption of, in and to said mortgaged property or any part thereof; that a sale of the whole of said mortgaged property

in one lot or parcel be ordered and decreed and that the proceeds of such sale may be applied to the expenses of this suit, including counsel fee, to the compensation and disbursements of your orators as trustee in the execution of its trust and to the payment of the amounts found to be due and unpaid for principal and interest upon the outstanding first mortgage bonds, and the balance if any as this honorable court may direct; and in case said proceeds shall not be sufficient for the purposes aforesaid, that your orator may have judgment against the defendant, the Cincinnati, Hamilton & Dayton Railway Company, for the amount of such deficiency.

4. That a receiver or receivers be appointed to take possession of the railroad, property and franchises covered by the first mortgage, and the earnings, income and proceeds thereof, with power to operate said property and with all such powers and authority as may be required to preserve the same until the sale thereof, and to secure the earnings of said railroad, property and franchises to the use of the holders of the first mortgage bonds, and with such powers and authority as are usually possessed by receivers in like cases as this honorable court may direct;

5. That the defendants and each and all of them, and their or any of their officers, directors, agents and employees, and all other persons claiming or pretending to claim under them or any of them may be restrained from interfering with or disposing of said railroad property and franchises or any part thereof, or any earnings or proceeds thereof;

6. That the defendants herein may answer all and singular the allegations in this bill of complaint contained but not under oath (answer under oath being hereby expressly waived);

7. That your orator may have such other and further relief in the premises as the nature and circumstances of the case may require and as to your honors may seem equitable and just.

May it please your honors to grant unto your orator not only a writ of injunction conforming to the prayer of this

bill but also a writ of subpoena to be issued out of and under the seal of this honorable court to be directed to said defendants the Cincinnati, Hamilton & Dayton Railway Company, Bankers Trust Company, and Central Trust Company of New York, commanding them and each of them at a certain time and under a certain penalty to be therein specified to be and appear before this honorable court then and there to answer the allegations, but not under oath, and to abide by the order and decree of the court herein and that said corporation may appear herein according to law.

And your orator will ever pray, etc.

United States Mortgage and Trust Company,

———, Vice-President.

Attest: ———, Secretary.

———, Solicitors for Plaintiff.

———, of Counsel.

United States of America, Southern District of New York,  
County of New York, ss.:

———, being duly sworn, deposes and says that he is an officer, to wit: a vice-president, of the United States Mortgage and Trust Company, the complainant named in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof; that the allegations contained therein in respect of the acts of said United States Mortgage and Trust Company are true of his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes the same to be true.

Sworn to before me, this ——— day of June, 1916.

———, Notary Public in and for the County and  
State of New York, whose commission expires.

**Form No. 12****Complaint by Trustee of Bondholders for Receiver of  
Railway Company (Another Form)**

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR  
THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION  
NO. 41. IN EQUITY.

Bankers Trust Company, Plaintiff,

vs.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

*To the Honorable the Judges of the District Court of the  
United States, for the Southern District of Ohio, Western  
Division:*

Bankers Trust Company brings this its bill of complaint against the Cincinnati, Hamilton & Dayton Railway Company, and thereupon the plaintiff complains and alleges as follows:

I. The plaintiff, Bankers Trust Company, at all the times hereinafter mentioned since March 25, 1903, was and it now is a corporation organized and existing under the laws of the State of New York, having its office and principal place of business in the Borough of Manhattan, city and county of New York in said state, and a citizen of said state and a resident of the Southern District of New York.

II. At all the times hereinafter mentioned the defendant the Cincinnati, Hamilton & Dayton Railway Company (hereinafter called the "Railway Company") was and it now is a consolidated corporation organized and existing under the laws of the State of Ohio, having its office and principal place of business in the City of Cincinnati in said State of Ohio, and a citizen of said State of Ohio and a resident of the Southern District thereof.

III. Heretofore the Railway Company, in the due exercise of the powers and authority by it in that behalf possessed, due corporate action having first been had, authorized the

issuance from time to time of its first and refunding mortgage four per cent. fifty-year gold bonds (hereafter called the "bonds"), limited to the aggregate principal amount of \$75,000,000 at any one time outstanding, bearing interest at the rate of four per centum per annum, and in the like exercise of such powers and authority, secured the payment of the bonds from time to time issued by the execution and delivery of a mortgage or deed of trust to the plaintiff, as trustee, known as the first and refunding mortgage of the Railway Company (hereinafter called the "mortgage"), bearing date July 1, 1909, a copy of which is annexed to this bill of complaint marked "Exhibit A" and is hereby incorporated herein by this reference thereto. Upon the execution and delivery thereof, the mortgage was promptly and duly recorded in every county wherein any of the lines of railroad or real property subject to the mortgage was situated.

IV. In the exercise of its lawful powers, the Railway Company from time to time has made and executed the bonds in the aggregate principal sum of \$29,190,000, each of which bonds contained its promise for a valuable consideration to pay on July 1, 1959, to the bearer thereof, or, if registered, to the registered holder thereof, the principal sum represented by such bond in gold coin of the United States of America of the standard of weight and fineness existing July 1, 1909, and to pay interest thereon at the rate of four per centum per annum in like gold coin on the first day of January and on the first day of July in each year until such principal sum should be paid.

V. By the mortgage the Railway Company, in order to secure the payment of the principal and interest of the bonds from time to time issued, and further to secure the performance and observance by the Railway Company of all the covenants and conditions therein contained and to declare the terms and conditions upon which the bonds were to be issued, and for other good and valuable considerations, granted, bargained, sold, aliened, remised, released, conveyed, confirmed,

assigned, transferred and set over unto the plaintiff, as trustee, the following described real and personal property:

All the lines of railway in the State of Ohio owned by the Railway Company, including a line running from Cincinnati, in the County of Hamilton (through the counties of Hamilton, Butler, Warren and Montgomery), to Dayton; and a line running from said Dayton (through the counties of Montgomery, Greene, Fayette, Ross, Vinton, Jackson, Gallia and Lawrence), to Ironton; and a line running from said Dayton (through the counties of Montgomery, Miami, Darke, Mercer, Van Wert and Allen), to Delphos, where it intersects the line of the Cincinnati, Findlay & Ft. Wayne Railway Company; and all other lines of railway then owned by the Railway Company wherever situated; together with all rights and appurtenances, easements and franchises belonging or in anywise appertaining to said lines of railway or any thereof; and all the rights of way, telegraph lines, telephone lines, tracks, turnouts, spurs and sidings, bridges, viaducts, culverts, piers, wharves, water and fuel stations, station houses, engine houses, depots, car houses, freight houses, storehouses, shops and other buildings, structures and fixtures of every sort and description, whether then owned or thereafter at any time acquired for use upon or for the purposes of the said lines of railway or any thereof;

Also all locomotives, engines, tenders, equipment and rolling stock, machinery, tools, implements, fuel, supplies and materials then owned, and all such as might thereafter be acquired for use or if used upon or for the purposes of the said lines or any thereof;

Also all rights, privileges, immunities and franchises of every kind and description which were then owned or might thereafter be acquired for the purposes of the said lines of railway or any thereof;

Also all the estate, right, title and interest of the Railway Company in and to a certain perpetual lease and agreement between the Railway Company's predecessor and the Dayton

& Michigan Railroad Company dated the 1st day of May, A. D. 1863, as modified by an agreement between the same corporations dated the 23d day of June, 1870, for the perpetual lease of the railroad of said the Dayton & Michigan Railroad Company, extending from the City of Dayton to the City of Toledo;

Also the perpetual lease and agreement dated January 18, 1872, between the Railway Company's predecessor and the Lake Shore & Michigan Southern Railway Company, and all amendatory agreements relating thereto, for the use of the bridges, tracks, depots and other property in and about the City of Toledo, together with all the property, rights, interest and privileges appertaining thereto:

Also all right, title and interest of the Railway Company under a certain lease between the Railway Company and the Cincinnati, Findlay & Ft. Wayne Railway Company, dated November 1, 1903, covering the line of railroad of said last-named company extending from Findlay, Ohio, to Fort Wayne, Indiana, and from Delphos, Ohio, to East Mandale, Ohio;

All the right, title and interest of the Railway Company under any lease or trackage agreement, or however arising, in or respecting the Home Avenue Railroad Company or any of its property;

Also all other rights and estate (as lessee or otherwise), and all other property, privileges and franchises theretofore acquired or held by the Railway Company under any lease or trackage or traffic agreement with any corporation, association or person whatsoever (included in which general description, were, among other property, certain agreements and arrangements whereby the Railway Company is now in possession of and operates, having thereon equipment and other property owned by it, the railroads, hereinafter described, of the Cincinnati, Indianapolis & Western Railway Company, Bowling Green Railroad Company, Columbus, Findlay & Northern Railroad Company, Piqua & Troy Branch Railroad Company and Cincinnati & Dayton Railway Company);

Also all other right, title and interest in and to the lines of railroad forming the subject of said leases, agreements and contracts and the appurtenant franchises and property, which the Railway Company then owned or might at any time or in any manner thereafter acquire.

Also all property, both real, personal and mixed, of every kind and description (and the tolls, incomes, rents and profits therefrom), then owned or which might be thereafter at any time acquired for use upon or for the purposes of the lines of railway above described or any thereof or which might thereafter be acquired with any of the bonds issued under the mortgage or the proceeds of the sale or other disposition thereof or of the lines of railway which might thereafter at any time become subject to the mortgage;

Also all other lines of railway that might be constructed or acquired with the bonds issued under the mortgage or with the proceeds of the sale or other disposition thereof and all additions and extensions to any of the lines of railway which at any time might be subject to the lien of the mortgage;

Also all and singular the tracks, rails, lands, rights of way and real and leasehold estates then or thereafter acquired by the Railway Company for use in the construction, maintenance and operation of the lines of railway subject to the lien of the mortgage or the said additions and extensions or any thereof;

Also all and singular the franchises, rights, titles, powers, appurtenances, exemptions, easements and privileges that the Railway Company then owned or might thereafter acquire for the construction, maintenance and operation of the lines of railway at any time subject to the lien of the mortgage including the said additions and extensions, or any thereof, together with the terminals, yards, works, depots, stations, watertanks, reservoirs, engine houses, turnouts, freight houses, coal sheds, coal chutes, machine shops, implements, bridges, viaducts, fences, telegraph lines, telephone lines, trestles, engines, locomotives, rolling stock, equipment, machinery, tools, implements,



material, furniture, fuel, supplies, contracts, books, documents, choses in action, incomes, rents, issues and all other property, real, personal and mixed of every kind and description wherever situated, that the Railway Company then owned or that it might thereafter acquire for use in the construction, maintenance or operation of the lines of railway that at any time might be subject to the lien of the mortgage, or any thereof, and said additions and extensions thereof, or that the Railway Company might thereafter acquire with the bonds issued under the mortgage or the proceeds of the sale or other disposition thereof;

Also all the right, title, ownership, equity of redemption and interest of the Railway Company in the following stocks:

71,149 shares, out of a total of 71,158 shares issued, of the capital stock of the Cincinnati, Indianapolis & Western Railway Company, the owner of a railroad extending from Hamilton, Ohio, through the State of Indiana to Springfield, Illinois, a distance of 283.86 miles, with a branch extending from Sidell, Illinois, to West Liberty, Illinois, a distance of 68.63 miles, said railroad and branch being subject to the mortgage of said Cincinnati, Indianapolis & Western Railway Company to North American Trust Company and Elias J. Jacoby, as trustees, dated December 1, 1902, securing its first and refunding mortgage four per cent. gold bonds, dated January 1, 1903, due January 1, 1953, and said branch and part of said railroad being subject to the mortgage of the Indiana, Decatur & Western Railway Company to the Central Trust Company of New York and Augustus L. Mason, as trustees, dated November 1, 1895, securing its first mortgage five per cent. gold bonds, dated November 1, 1895, due January 1, 1935;

12,495 shares, out of a total of 12,500 shares issued, of the capital stock of the Cincinnati, Findlay & Ft. Wayne Railway Company, the owner of said railroad from Findlay, Ohio, to Ft. Wayne, Indiana, and a branch from Delphos, Ohio, to East Mandale, Ohio, in all 91.39 miles, said last mentioned

railroad and branch being subject to the mortgage of said last named company to the Continental Trust Company of the City of New York and Elias J. Jacoby, as trustees, dated November 1, 1903, securing its first mortgage four per cent. gold bonds, dated November 1, 1903, due November 1, 1923;

780 shares, out of a total of 785 shares issued, of the capital stock of the Bowling Green Railroad Company, the owner of a railroad from Tontogany, Ohio, to North Baltimore, Ohio, a distance of 18.95 miles, part of said railroad being subject to the mortgage of the Toledo, Findlay & Springfield Railway Company to J. Kent Hamilton, as trustee, dated October 1, 1889, securing its first mortgage six per cent. 40-year, gold bonds, dated October 1, 1889, due October 1, 1929;

2628½ shares, out of a total of 2713½ shares issued, of the capital stock of the Cincinnati & Dayton Railway Company, the owner of a railroad from Hamilton, Ohio, to Middletown, Ohio, a distance of 13.51 miles, said last-mentioned railroad being subject to the mortgage of said last-named company to American Loan and Trust Company, as trustee, dated July 1, 1887, securing its fifty-year four and one-half per cent. first mortgage gold bonds, dated July 1, 1887, due July 1, 1937;

850 shares, out of a total of 857 shares issued, of the capital stock of the Columbus, Findlay & Northern Railroad Company, the owner of a railroad from Deshler, Ohio, to Findlay, Ohio, a distance of 17.56 miles, free of prior liens;

4993 shares, out of a total of 5000 shares issued, of the capital stock of the Piqua & Troy Branch Railroad Company, the owner of a railroad from Piqua, Ohio, to Troy, Ohio, a distance of 8.81 miles, said last-mentioned railroad being subject to the mortgage of said last-named company to Union Savings Bank and Trust Company, as trustee, dated February 23, 1900, securing its first mortgage four per cent. gold bonds, dated February 1, 1900, due November 1, 1939;

1065 shares, out of a total of 3210 shares, issued, of the capital stock of the Dayton Union Railway Company, the owner of the union depot property at Dayton, Ohio;

875 shares, out of a total of 1725 shares issued, of the capital stock of the Dayton & Union Railroad Company, the owner of a railroad from Dayton, Ohio, to Union, Ohio;

399 shares, out of a total of 500 shares issued, of the capital stock of the Hamilton Belt Railway Company, the owner of about three miles of track in and about the City of Hamilton;

11 shares, out of a total of 16 shares issued, of the capital stock of the Lima Belt Railway Company, the owner of tracks in and about the city of Lima, Ohio;

2995 shares, out of a total of 3000 shares issued, of the capital stock of the Miami Valley Railway Company, the owner of an electric railroad between Troy and Piqua, Ohio;

Also all additional shares of stock then owned or which might thereafter be acquired by the Railway Company in any one or more of the said corporations hereinbefore mentioned.

Also all shares of the capital stock and securities or obligations of other corporations or any interest therein which might thereafter be acquired by the Railway Company with the bonds issued under the mortgage or the proceeds thereof.

Also all property of every name and nature, from time to time thereafter, by delivery or by writing of any kind, for the purposes of the mortgage, pledged, assigned or transferred by the Railway Company or any one in its behalf to the trustee (meaning the plaintiff herein), which was thereby authorized to receive any property at any and all times, as and for additional security, for the payment of the bonds issued or to be issued under the mortgage, and to hold and apply any and all such property according to the terms of the mortgage.

Also all other property, real and personal, at any time acquired by and for the Railway Company with bonds issued under the mortgage, or with the proceeds of the sale of any of said bonds.

The mortgage provided that it should not be deemed to include any shares of stock at the date of the mortgage owned by the Railway Company, or in which at said date it had an

interest, in any other corporations other than those specified above and in the granting clause of the mortgage; and that it was subject to the lien of the mortgages securing the underlying bonds enumerated in the mortgage and of the Railway Company's refunding mortgage and consolidated mortgage, in so far as said mortgages or any of them should cover any part of the premises or property hereinbefore described, it being stated in the mortgage, however, that it was anticipated at an early date said refunding mortgage and said consolidated mortgage would be discharged. The plaintiff is informed and believes, and therefore alleges, that said refunding mortgage and said consolidated mortgage of the Railway Company have since been discharged.

VI. Since the execution of the mortgage the following securities have been delivered to the plaintiff, as trustee under the mortgage, as additional security for the bonds, and have ever since been and are now held by the plaintiff, as such trustee, viz.:

1. \$25,000, face amount, of general first mortgage six per cent. gold bonds of the Hamilton Belt Railway Company, dated April 30, 1898, maturing May 1, 1918, guaranteed both as to principal and interest by the Cincinnati, Hamilton & Dayton Railway Company;

2. \$25,000, face amount, of first mortgage four per cent. gold bonds of the Piqua & Troy Branch Railroad Company, dated February 1, 1900, maturing November 1, 1939;

3. \$300,000, face amount, of fifty-year four and one-half per cent. first mortgage gold bonds of the Cincinnati & Dayton Railway Company, dated July 1, 1887, maturing July 1, 1937;

4. \$300,000, face amount, of first mortgage six per cent. forty-year gold bonds of the Toledo, Findlay & Springfield Railway Company, dated October 1, 1889, maturing October 1, 1929;

5. \$736,000, face amount, of equipment four and one-half per cent. notes (Robert Winthrop & Co. trust) of the Cincinnati, Hamilton & Dayton Railway Company, dated October 1, 1904, matured in eight installments of \$92,000 each, on October 1, 1909, and on April 1 and October 1 in each year thereafter to and including April 1, 1913;

6. \$69,840.90, face amount, of certificates of Judson Harmon, as Receiver of the Cincinnati, Hamilton & Dayton Railway Company, dated April 1, 1909, matured in eighteen installments of \$3,880.05 each, on October 1, 1909, and on January 1, April 1, July 1 and October 1 in each year thereafter to and including January 1, 1914;

7. \$62,000, face amount, four per cent. equipment notes (Blair & Co. trust) of the Indiana, Decatur and Western Railway Company (which was consolidated into Cincinnati, Indianapolis and Western Railway Company, by agreement dated August 1, 1902), dated November 2, 1901, matured in four installments of \$13,000 each, on November 1, 1909, and on May 1 and November 1 of each year thereafter to and including May 1, 1911, and in one installment of \$10,000, on November 1, 1911;

8. \$176,654.07, face amount, of four and one-half per cent. equipment notes (Rudolph Kleybolte & Co. trust) of the Cincinnati, Hamilton & Dayton Railway Company, dated April 1, 1905, matured in nine installments, on April 1, 1909, and on October 1 and April 1 in each year thereafter to and including April 1, 1913.

The aforesaid securities described in Nos. 5 to 8, both inclusive, of this paragraph VI, are in cancelled form, but in accordance with the provisions of Section 7 of Article One of the mortgage, the same were delivered in such form to the plaintiff, as trustee under the mortgage, upon the certification and delivery by the plaintiff, as such trustee, of certain of the bonds. The plaintiff is not informed as to whether or not, as between it and the Railway Company, the aforesaid cancelled

securities possess or retain any vitality and it reserves the determination of such question for proof upon the trial of this cause.

VII. Since the execution of the mortgage the Railway Company has acquired certain other lands, tenements, easements, railways, ways, rights of way, grants, tracks, depots, station houses, superstructures, bridges, erections, fixtures, rights, interests, effects and franchises, and divers other real and personal property appurtenant to the lines of railway embraced in the mortgage or for use in connection therewith. The exact character and extent of such other property so subsequently acquired the plaintiff is unable at this time accurately and definitely to state, but it alleges on information and belief that all such properties so subsequently acquired became on the acquisition thereof subject to the lien of the mortgage.

VIII. The \$29,190,000 principal amount of the bonds so made and executed were duly authenticated by the endorsement thereon of the certificate of the plaintiff, Bankers Trust Company, as trustee, as provided in and by the mortgage, and the bonds so authenticated were duly issued and delivered by the plaintiff, Bankers Trust Company, as such trustee, pursuant to the provisions of the mortgage, and such bonds so authenticated and delivered (except \$19,000 principal amount thereof) have all been duly issued, negotiated and delivered by the Railway Company, and all of the bonds so authenticated, negotiated and delivered (except as aforesaid) are now outstanding and valid, lawful and enforceable obligations of the Railway Company to their full principal amounts respectively, in the hands of divers persons, firms and corporations, who are bona fide holders thereof for value.

IX. The Railway Company failed to pay the installment of interest due July 1, 1914, upon said \$29,190,000 principal amount of the bonds issued and outstanding under and secured by the mortgage, or upon any part thereof, and such default still continues. The plaintiff is informed and believes and therefore alleges that demand was duly made, in accordance

with the terms of the mortgage and the bonds for the payment of said installment of interest, or some part thereof, so due on July 1, 1914, as aforesaid, but that payment of said installment of interest was refused and that the whole of said installment of interest upon the bonds issued and outstanding as aforesaid remains due from and owing and unpaid by the Railway Company.

X. The plaintiff further alleges that default was made in the payment of the installment of interest due July 1, 1914, upon the aforesaid \$3,162,000 principal amount of first mortgage five per cent. gold bonds of the Indiana, Decatur & Western Railway Company, and that such default still continues. The plaintiff is informed and believes and therefore alleges that demand was duly made, in accordance with the terms of such bonds and the mortgage securing the same, for the payment of said installment of interest, or some part thereof, so due on July 1, 1914, as aforesaid, but that payment of said installment of interest was refused and that the whole of said installment of interest upon such bonds remains due, owing and unpaid.

XI. The plaintiff further alleges that default was made in the payment of the installment of interest due July 1, 1914, upon the aforesaid \$4,722,000 principal amount of first and refunding mortgage four per cent. gold bonds of Cincinnati, Indianapolis & Western Railway Company, and that such default still continues. The plaintiff is informed and believes and therefore alleges that demand was duly made, in accordance with the terms of such bonds and the mortgage securing the same, for the payment of said installment of interest, or some part thereof, so due on July 1, 1914, as aforesaid, but that payment of said installment of interest was refused and that the whole of said installment of interest upon such bonds remains due, owing and unpaid.

XII. On information and belief the plaintiff alleges that for more than a year last past the earnings of the Railway Company from all sources in excess of the cost of operation, maintenance and other necessary expenses, have been far less

than the amount required to enable it to pay the interest upon the bonds and its other obligations and make necessary betterments, improvements and extensions to its properties; that by reason of such deficiency in earnings and the disastrous floods which occurred in Ohio in the year 1913, whereby the properties owned or operated by the Railway Company were greatly damaged, necessitating the immediate expenditure of large sums of money in the replacement and repair of such properties, the Railway Company has been unable to meet its bills for equipment, materials and supplies necessary for the operation and maintenance of the properties owned or operated by it, and has been obliged to borrow large sums of money for the purpose of making such repairs and replacements, of paying such expenses and of meeting the interest on the bonds and its other obligations, and thereby has incurred a large debt amounting to upwards of \$5,250,000, which is held by numerous persons, firms and corporations.

On information and belief the plaintiff further alleges that the Railway Company is without means with which to pay its outstanding obligations; that its credit is destroyed and that it has no practicable way of effecting new loans either for the purpose of paying any of its obligations or for providing funds for making necessary betterments or improvements to the property owned or operated by it; that the Railway Company is insolvent; that its creditors are located in many jurisdictions and that the plaintiff fears that certain of such creditors will commence suit against the Railway Company and attempts be made to attach its properties or parts thereof; that certain of the creditors of the Railway Company will probably claim and attempt to enforce liens against the property owned, operated or controlled by it, and that there is great danger that its creditors will levy upon its rolling stock, equipment and supplies, earnings and bank accounts, and thereby prevent it from continuing the operation of its system of railways.

On information and belief the plaintiff further alleges that by reason, among others, of the facts hereinbefore set forth,



there is danger that the Railway Company will be unable to comply with other of its covenants under the mortgage and its covenants under other mortgages and trust indentures securing other issues of its obligations, and particularly that further defaults will occur in respect of the various issues of bonds described in section 7 of article 1 of the mortgage as "underlying bonds," and that the mortgages securing said several issues of bonds will be foreclosed; that there is consequently great danger that the system of railways owned and operated by the Railway Company will be disrupted and disorganized and that the Railway Company will be unable to continue the operation thereof; that it is of vital importance not only to the holders of the bonds and of the other obligations of the Railway Company, the holders of the underlying bonds and other creditors of the Railway Company, but also to the public, that the operation of said system of railways should not be interrupted or disorganized until the rights of the various bondholders and creditors can be ascertained and an opportunity given for some reorganization or readjustment of such properties.

XIII. In and by section 2 of article 4 of the mortgage it was, among other things, in substance provided, that in case default should be made in the payment of any interest on any bond or bonds at any time outstanding and secured by the mortgage and any such default should have continued for the period of three months, the trustee personally, or by its agents or attorneys, might enter into and upon all or any part of the properties conveyed by or intended so to be, or subject to the lien of, the mortgage, and might exclude the Railway Company, its agents and servants, wholly therefrom, and thereafter use, operate, manage and control the same and conduct the business thereof to the best advantage of the holders of the bonds.

In and by section 18 of article 4 of the mortgage it was further, among other things, provided:

"Upon application of the trustee (meaning the plaintiff herein) and with the consent of the Railway Company,

if then there be no subsisting default such as is specified in said section 2 of this article 4, and without such consent if then there shall be such a subsisting default, a receiver may be appointed to take possession of, and to operate, maintain and manage the whole or any part of the property subject to this indenture, and the Railway Company shall transfer and deliver to such receiver all such property, wheresoever the same may be situated; and in every case, when a receiver of the whole or of any part of said property shall be appointed under this section, or otherwise, the net income and profits of such property shall be paid over to, and shall be received and applied as in this section provided, by the trustee, for the benefit of the holders of the bonds hereby secured; *provided, however*, that notwithstanding the appointment of any such receiver, the trustee, as pledgee, shall be entitled to retain possession and control of any stocks, bonds, cash and other property pledged or to be pledged with the trustee hereunder."

XIV. On information and belief the plaintiff further alleges that the property subject to the lien of the mortgage, together with all other property of the Railway Company, is insufficient and inadequate security for the bonds; that by reason, among others, of the facts hereinbefore alleged such security is rapidly depreciating and deteriorating in value and that if the properties owned or operated by the Railway Company are permitted to remain in its possession or under its control there is great danger that the value of such security for the bonds will further depreciate and deteriorate, and that the plaintiff and the bondholders represented by it, as well as other creditors of the Railway Company, will thereby suffer great and irreparable loss and damage; that under the circumstances hereinbefore set forth the interference of a court of equity for the protection of the rights of the plaintiff and the holders of the bonds, and the rights of other creditors of the Railway Company, is imperatively

required, and especially the immediate appointment of a receiver by this Honorable Court, to take charge of and preserve the properties of the Railway Company, including all of the properties covered by the mortgage and all other property, income, contracts and rights of every name and nature (excepting the securities pledged under the mortgage and now in the possession of the plaintiff), and thereby to conserve said properties and to continue until further order of this court the operation of said railways and other business of the Railway Company for the accommodation of the public, and to receive and accumulate the earnings, income, revenues, rents, issues and profits of the property of the Railway Company until the bonds shall become payable either by lapse of time or otherwise, and to pay the expenses of the operation of said properties under orders of court to be made from time to time until final decree herein.

XV. No proceedings at law have been had nor any action commenced to recover the principal or interest of the bonds.

XVI. This is a civil suit in the nature of a suit in equity and the matter in dispute exceeds, exclusive of interest and costs, the sum of \$5,000.

WHEREFORE and inasmuch as the plaintiff is without adequate remedy at law in the premises, it prays that a receiver be appointed by this Honorable Court of all and singular the property of the Railway Company, save and except the securities owned by it and pledged with the plaintiff, as trustee under the mortgage, together with all of the earnings, income, revenue, rents, issues and profits thereof, with the usual powers of receivers in such cases and with full power and authority to take possession of all the property of the Railway Company (except as aforesaid), including any and all properties leased to the Railway Company, and to operate the same and to collect and receive the income and tolls thereof and apply the same under the order and decree of this court, and that the Railway Company be required to transfer and turn over to such receiver all of its properties and assets of every nature and description (save and except the securities so held by the plaintiff as

aforesaid) ; that the mortgage be foreclosed and an order of sale issued herein appropriate to said purposes and a writ of injunction issue out of and under the seal of this Honorable Court, commanding, enjoining and restraining the Railway Company, its officers, directors, agents and employees, and all other persons claiming or pretending to claim under it, and all other persons, firms and corporations whatsoever and wheresoever located, situated or domiciled, from interfering with, transferring, selling, or disposing of, attaching, levying upon or in any manner whatsoever disturbing any part of the property now or hereafter to be in the possession of the receiver so to be appointed, and that the plaintiff may have such other and further relief as equity and good conscience may ordain.

May it please the court to grant unto the plaintiff a writ of subpoena to be issued out of and under the seal of this court, directed to the defendant, the Cincinnati, Hamilton & Dayton Railway Company, requiring it to appear on a day certain before this court and then and there full, true, direct and perfect answer make to all and singular the allegations herein, but not under oath, answer under oath being hereby expressly waived, and to perform and abide by such orders, directions and decrees herein as to the court shall seem proper.

BANKERS TRUST COMPANY,

[SEAL]

By Frank N. B. Close, Vice-President,  
Maxwell & Ramsey, Union Central Building, 1 West  
Fourth Street, Cincinnati, O.,  
White & Case, 14 Wall Street, New York, N. Y.,

Solicitors for Plaintiff.

Lawrence Maxwell, Union Central Building, 1 West Fourth  
Street, Cincinnati, O.,  
Roberts Walker, 14 Wall Street, New York, N. Y., of Counsel.

United States of America, Southern District of Ohio, County  
of Hamilton, ss.:

Frank N. B. Close, being duly sworn, deposes and says that he is an officer, to wit, a Vice-President, of Bankers Trust Com-

pany, the plaintiff above named; that he has read the foregoing bill of complaint and knows the contents thereof; that the allegations contained therein in respect of the acts of said Bankers Trust Company are true of his own knowledge, and that as to all other allegations contained therein he is credibly informed and believes the same to be true.

FRANK N. B. CLOSE.

Sworn to before me this 2d day of July, 1914.

ROBERT A. TAFT, Notary Public, Hamilton County.

[NOTARY SEAL] Hamilton County.

Commission expires November 9, 1916.

[Exhibit A to the foregoing complaint is the first and re-funding mortgage dated July 1, 1909, made by the Cincinnati, Hamilton & Dayton Railway Company to Bankers Trust Company, as trustee.]

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## Form No. 13

### Complaint by Noteholder for Receiver of Railway Company

DISTRICT COURT OF THE UNITED STATES, DISTRICT OF MASSACHUSETTS. IN EQUITY. No. 744

Intercontinental Rubber Company, Complainant,

v.

Boston and Maine Railroad, Defendant

### BILL OF COMPLAINT

*To the Honorable Judge of the District Court of the United States for the District of Massachusetts:*

Now comes the complainant, suing on behalf of itself and all other creditors of the Boston and Maine Railroad who may join in the prosecution of this suit, and says as follows:

1. The complainant, Intercontinental Rubber Company, is a corporation organized and existing under the laws of the State of New Jersey, and is a citizen of the State of New Jersey, and has its principal offices at 15 Exchange Place, Jersey City, in that state.

The defendant is a corporation organized and existing under the laws of the State of Massachusetts, and is a citizen of said state and has its principal offices in Boston, in said state. It is also incorporated under the laws of the States of Maine and New Hampshire, and is a citizen of each of said states.

2. The defendant, for a valuable consideration, made thirteen several promissory notes, each payable to itself and each endorsed by it, copies of each of which notes, showing the payments thereon and the extensions thereof, are hereto annexed as Exhibits A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-11, A-12, A-13, respectively. The complainant, Intercontinental Rubber Company, is the owner and the holder of each of said notes and the defendant owes to it the amounts due thereon, to wit, \$51,000, together with interest thereon at the rate of six per cent. per annum from July 17, 1916.

3. The defendant owns and operates a steam railroad, the main lines of which run as follows:

From Boston, in the State of Massachusetts,	
through Dover in the State of New Hampshire,	
to Rigby, in the State of Maine.....	111.11 miles
From said Boston, through Portsmouth, in the	
State of New Hampshire, to said Rigby.....	104.90 "
From Jewett, in the State of Maine, to Intervale,	
in the State of New Hampshire.....	73.37 "
From North Cambridge, in the State of Massachusetts,	
to Northampton in said State.....	95.69 "
From Worcester, in the State of Massachusetts,	
to Westbrook, in the State of Maine.....	139.47 "

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The total mileage of said lines being..... 524.54 "

In addition to these main lines, it owns and operates numerous branches, having an aggregate mileage of 182.79 miles, located in said three states.

The defendant also owns and operates an electric street railway running through the City of Portsmouth, New Hampshire, and the Towns of Greenland, North Hampton, Hampton and Rye, in said state, having a total mileage of 18.10 miles.

In addition to the lines of railroads owned and operated by the defendant, as above set forth, it controls and operates under lease the property of the following steam railroad companies, having the mileages respectively indicated.

Boston and Lowell Railroad Corporation.....	111.27	miles
Nashua & Lowell Railroad Corporation (leased to Boston and Lowell Railroad Corporation; lease assigned to Boston and Maine Railroad) .....	14.50	"
Stony Brook Railroad Corporation (leased to Boston and Lowell Railroad Corporation) ..	13.16	"
Wilton Railroad Company (leased to Boston and Lowell Railroad Corporation; lease assigned to Boston and Maine Railroad)....	15.50	"
Peterborough Railroad (leased to Boston and Lowell Railroad Corporation; lease assigned to Boston and Maine Railroad).....	10.50	"
Northern Railroad (leased to Boston and Lowell Railroad Corporation; lease assigned to Boston and Maine Railroad).....	82.91	"
Concord & Claremont N. H. Railroad...	70.90	"
The Peterborough and Hillsborough Railroad .....	18.51	"
The Connecticut and Passumpsic Rivers Railroad Company (leased to Boston and Lowell Railroad Corporation; lease assigned to Boston and Maine Railroad).....	110.30	"

Massawippi Valley Railway Company (leased to the Connecticut and Passump- sic Rivers Railroad Company).....	35.46	miles
The Concord & Montreal Railroad.....	339.47	"
Nashua & Acton Railroad.....	20.12	"
New Boston Railroad Company (leased to the Concord & Montreal Railroad).....	5.19	"
Suncook Valley Railroad (leased to the Con- cord & Montreal Railroad).....	17.41	"
Pemigewasset Valley Railroad (leased to the Concord & Montreal Railroad).....	22.93	"
Franklin & Tilton Railroad (leased to the Con- cord & Montreal Railroad; lease assigned to Boston and Maine Railroad).....	4.95	"
Fitchburg Railroad Company.....	394.14	"
Vermont and Massachusetts Railroad Company (leased to Fitchburg Railroad Company)..	58.58	"
Troy & Bennington Railroad Company (leased to Fitchburg Railroad Company).....	5.04	"
Lowell and Andover Railroad Company.....	8.85	"
Manchester and Lawrence Railroad.....	22.39	"
Kennebunk and Kennebunkport Railroad.....	4.50	miles
Connecticut River Railroad Company.....	88.36	"

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The total mileage of such leased lines being.1474.94 "

The defendant also operates under contract the Concord and Portsmouth Railroad, 39.87 miles long, running between Manchester, New Hampshire, and Portsmouth, New Hampshire.

The defendant also operates the Horn Pond Branch Railroad Company, .59 miles long, in the City of Woburn, Massachusetts, under a verbal agreement.

The defendant also operates under trackage rights agreements over the following lines of railroad:

Portland Terminal Company, in the Cities of  
Portland, South Portland and Westbrook, in  
the State of Maine ..... 19.56 miles



New York, New Haven & Hartford Railroad Company, between North Acton, Massachusetts, and Concord Junction, in said state.....	4.21 miles
Boston and Albany Railroad, in the Town of Winchendon, Massachusetts .....	.21 "
Troy Union Railroad, in the city of Troy, State of New York .....	2.03 "
Grank Trunk Railway Company, from Lennoxville, in the Province of Quebec, to Sherbrooke, in said Province .....	2.95 "
Delaware & Hudson Company, from Mechanicsville, in the State of New York, to Crescent, in said state .....	6.94 "
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The total mileage of such lines being.....	35.90 "

The Concord & Montreal Railroad, under lease to the Boston and Maine Railroad, as set forth above, owns in addition to its steam railroad 28.70 miles street electric railway running from Manchester, New Hampshire, through Concord, New Hampshire, to Penacook, New Hampshire. This electric railway is operated by the Boston & Maine Railroad under its lease of the Concord & Montreal Railroad.

The defendant also controls and operates the Conway Electric Street Railway Company, running from Conway, Massachusetts, to Deerfield, Massachusetts, a distance of 9.91 miles.

The defendant also operated as agent the Sullivan County Railroad, running between Windsor and Bellows Falls, in the State of Vermont, and the Vermont Valley Railroad, running between Bellows Falls and Brattleboro, in said State of Vermont. These two railroads form connecting links in the Connecticut River Line running from Springfield, in the State of Massachusetts, to Sherbrooke, in the Province of Quebec, in the Dominion of Canada.

The defendant owns a majority of the stock of the York Harbor and Beach Railroad. The principal officers of the York Harbor and Beach Railroad are officers of the Boston and Maine Railroad, but it is operated as a separate railroad by the defendant as agent.

All of the stock of the Mount Washington Railway Company is owned by the Concord & Montreal Railroad. The Mount Washington Railway Company is operated separately from the Boston and Maine Railroad, although its officers are officers of the Boston and Maine Railroad or of the Concord & Montreal Railroad.

The majority of the stock of the Montpelier & Wells River Railroad is owned by the Vermont Valley Railroad, all of whose stock is owned by the Connecticut River Railroad Company under lease to the Boston & Maine Railroad, as set forth above. A majority of the stock of the Barre & Chelsea Railroad Company is owned by the Vermont Valley Railroad. A majority of the stock of the St. Johnsbury & Lake Champlain Railroad Company is owned by the Boston & Lowell Railroad Corporation. These three companies, however, are operated separately from the Boston & Maine Railroad, although many of their officers are officers of the Boston & Maine Railroad.

The Fitchburg Railroad Company, leased to the Boston & Maine Railroad, as set forth above, owns one-quarter of the capital stock of the Troy Union Railroad Company, which company owns a passenger station and certain railroad facilities in Troy, New York. The Boston & Maine Railroad pays as rental for the use of the property of said Troy Union Railroad Company one-quarter of the net operating expense of said company.

Of the two thousand two hundred and fifty-one and sixty-nine one hundredths (2,251.69) miles of line of steam railroad operated by the Boston & Maine Railroad as aforesaid, 787.46 miles are in the State of Massachusetts, 159.47 miles in the

State of Maine, 1,020.67 miles in the State of New Hampshire, 123.95 miles in the State of Vermont, 121.73 miles in the State of New York and 38.41 miles in the Dominion of Canada.

The defendant is also the owner of equipment consisting of locomotive engines, freight, passenger and other cars, together with the usual railroad appurtenances, and under said leases has the possession and control of other rolling stock owned by its subsidiary companies.

The various railroads owned and leased by the defendant are operated by it as a continuous through line connecting some six or seven hundred cities and towns in the States of Massachusetts, Maine, New Hampshire, Vermont and New York and the Dominion of Canada. It thus forms a line for the transportation of passengers, freight, express and the United States mail between the several states, constituting a line of railroad engaged in interstate and foreign commerce.

4. The total outstanding capital stock of the defendant consists of 395,051 shares of common stock of the par value of \$100 per share and of 31,498 shares of the noncumulative six per cent. preferred stock of the par value of \$100 per share, making a total outstanding capital stock at par of \$42,654,900, of which \$39,505,100 is common stock and \$3,149,800 is preferred.

5. The total outstanding bonds issued and assumed by the Boston & Maine Railroad amount to \$43,338,000. Of these \$1,000,000 is the debt of the Portsmouth, Great Falls & Conway Railroad Company, assumed by the Boston & Maine Railroad at the time of the purchase of said railroad by the Boston & Maine Railroad on May 9, 1890; and \$1,265,000 bonds of the Worcester, Nashua & Rochester Railroad Company, assumed by the Boston & Maine Railroad at the time of the purchase of said railroad by the Boston & Maine Railroad on June 13, 1911. The said bonds of the Portsmouth, Great Falls & Conway Railroad Company are secured by a first mortgage on that part of the Boston & Maine Railroad

running between Jewett, Maine, and North Conway, New Hampshire, 72.86 miles of main line. The said bonds of the Worcester, Nashua & Rochester Railroad Company are secured by a first mortgage on that part of the Boston & Maine Railroad running between Worcester, Massachusetts, and Nashua, New Hampshire, 46.09 miles. With the exception of the mortgages herein stated, the property of the Boston & Maine Railroad is subject to no mortgage, and the bonds are so-called plain or debenture bonds. Of the Boston & Maine Railroad bonds above mentioned, \$1,919,000 are the so-called Sinking Fund Improvement Bonds, due February 1, 1937. The trustee of the sinking fund now has on hand, to secure said bonds, cash to the amount of \$50,356.51 and securities costing \$1,304,800.97, a total of \$1,356,157.48.

6. The defendant is indebted to the amount of \$13,306,060 upon short term promissory notes now outstanding, given by it for valuable considerations, of which notes amounting to \$13,100,560 fall due August 31, 1916. The remainder of said notes fell due March 2, June 2 and July 17, 1916.

Notes made by said Vermont Valley Railroad to the amount of \$2,300,000 are outstanding, which will fall due August 31, 1916, and the defendant is liable as endorser thereof.

Upon information and belief the complainant avers that said Vermont Valley Railroad Company will not pay these notes at their maturity and that payment thereof will be demanded of the defendant.

There are also outstanding notes of said Connecticut River Railroad Company to the amount of \$2,000,000, falling due August 31, 1916, and that company claims that said notes were given for the temporary accommodation of the defendant and that the defendant is bound to issue stocks or bonds in payment of the indebtedness represented by them.

The defendant is not a party as endorser, surety or guarantor of said notes and does not admit said claim.

The defendant has also guaranteed the payment of principal and interest of the following bonds:

The St. Johnsbury & Lake Champlain R. R. Co.		
first mortgage five per cent. bonds, due March 1, 1944 .....		\$1,328,000
Concord & Claremont N. H. R. R. first mortgage five per cent. bonds, due January 1, 1944.....		500,000
Peterborough & Hillsborough R. R. first mortgage four and one-half per cent. bonds, due July 1, 1917 .....		100,000
Portland Union Railway Station Co. sinking fund four per cent. bonds, due July 1, 1927-9, guaranteed jointly with the Maine Central R. R. Co...		300,000
Total .....		\$2,228,000

7. Under the terms of the several leases the Boston & Maine Railroad agreed to pay not only rentals in the nature of dividends upon the stock of the lessor companies, but also, in most cases, the interest upon the debt of the lessors and the expenses of maintaining their separate organizations. The following table shows the amounts which the Boston & Maine Railroad was thus obligated to pay during its last fiscal year, ending June 30, 1916. In this table the second column shows the principal sums upon which interest or dividends were to be paid by the aforesaid rentals, and the third column the sums which the defendant was obligated to pay:

	Outstanding June 30, 1916.	Interest, Dividends, etc., accruing year to June 30, 1916.
Boston & Lowell R. R. Corp'n:		
Funded Debt .....	\$6,528,000.00	\$251,200.49
Unfunded Debt .....		28,472.92
Stock .....	7,679,400.00	614,352.00
Organization Expenses.....		7,000.00
Nashua & Lowell R. R. Corp'n:		
Stock .....	800,000.00	72,000.00
Organization Expenses.....		1,000.00

	Outstanding June 30, 1916.	Interest, Dividends, etc., accruing year to June 30, 1916.
<b>Stony Brook R. R. Corp'n:</b>		
Stock .....	\$ 300,000.00	\$ 21,000.00
Organization Expenses.....		500.00
<b>Wilton R. R. Co.:</b>		
Stock .....	240,000.00	20,400.00
<b>Peterborough R. R.:</b>		
Stock .....	385,000.00	15,400.00
Organization Expenses .....		300.00
<b>Horn Pond Branch R. R. Co:</b>		
Stock .....	2,000.00	
<b>Northern R. R.:</b>		
Stock .....	3,068,400.00	184,104.00
Organization Expenses .....		5,000.00
<b>Concord &amp; Claremont R. R.:</b>		
Funded Debt.....	500,000.00	25,000.00
Stock .....	412,400.00	
<b>The Peterborough and Hillsboro R. R..</b>		
Funded Debt.....	165,000.00	4,500.00
Stock .....	45,000.00	
<b>Connecticut &amp; Passumpsic Rivers:</b>		
Funded Debt.....	1,900,000.00	76,000.00
Stock .....	2,500,000.00	150,000.00
Organization Expenses .....		3,000.00
<b>Massawippi Valley Railway Co.:</b>		
Stock .....	800,000.00	24,000.00
<b>*Newport and Ritchford R. R. Co.:</b>		
Funded Debt.....	350,000.00	17,500.00
Stock .....	350,000.00	
<b>The Concord &amp; Montreal R. R.:</b>		
Funded Debt.....	7,223,000.00	286,555.00
Stock .....	8,257,600.00	577,948.00
Organization Expenses .....		7,000.00

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\* Sublet to Canadian Pacific Railway Company for \$18,000 per year.

	Outstanding June 30, 1916.	Interest, Dividends, etc., accruing year to June 30, 1916.
Nashua & Acton R. R.:		
Stock .....	\$ 300,000.00	
New Boston R. R. Co.:		
Stock .....	84,000.00	\$ 2,800.00
Concord & Portsmouth R. R.:		
Stock .....	350,000.00	24,500.00
Organization Expenses .....		500.00
Suncook Valley R. R.:		
Stock .....	341,700.00	10,251.00
Organization Expenses .....		300.00
Pemigewasset Valley R. R.:		
Stock .....	541,500.00	32,490.00
Organization Expenses .....		300.00
Franklin & Tilton R. R.:		
Stock .....	265,600.00	
Fitchburg R. R. Co.:		
Funded Debt.....	24,580,000.00	1,026,705.72
Unfunded Debt.....	2,616,577.50	130,016.49
Stock, Preferred.....	18,860,000.00	943,000.00
Stock, Common.....	7,000,000.00	
Organization Expenses .....		10,000.00
Vermont and Massachusetts R. R. Co.:		
Funded Debt.....	772,000.00	27,020.00
Stock .....	3,193,000.00	191,580.00
Organization Expenses .....		3,000.00
Troy & Bennington R. R. Co.:		
Stock .....	150,800.00	15,080.00
Organization Expenses .....		320.00
Lowell and Andover R. R. Co.:		
Stock .....	625,000.00	52,500.00
Manchester and Lawrence R. R.:		
Funded Debt.....	274,000.00	10,960.00
Stock .....	1,000,000.00	100,000.00
Organization Expenses .....		2,000.00

	Outstanding June 30, 1916.	Interest, Dividends, etc., accruing year to June 30, 1916.
Kennebunk and Kennebunkport R. R.:		
Stock .....	\$ 65,000.00	\$ 2,925.00
Connecticut River R. R. Co.:		
Funded Debt.....	2,259,000.00	84,065.00
Unfunded Debt.....	2,485,000.00	156,366.65
Stock .....	3,233,300.00	323,330.00
Organization Expenses .....		2,000.00

## SUMMARY

Funded Debt.....	\$44,551,000.00	\$1,809,506.21
Unfunded Debt.....	5,101,577.50	314,856.06
Stock .....	60,849,700.00	3,377,660.00
Organization Expenses .....		42,220.00
Totals .....	\$110,502,277.50	\$5,544,242.27

The leases above referred to have many years to run.

In addition to the rentals above stated, the defendant was obligated to pay interest on its bonds to the amount of \$1,754,980 and interest on its unfunded debt to the amount of \$1,271,581 during the last fiscal year ending June 30, 1916.

The amounts of cash necessary, in the said fiscal year ended June 30, 1916, to meet the above rentals and interest, including, also, the annual payment which the Boston and Maine Railroad is required to make to its sinking fund, with the dates when the same were payable, were as follows:—

August 1, 1915.....	\$243,575.00
September 1, 1915.....	320,930.00
September 15, 1915.....	40,890.00
September 21, 1915.....	38,000.00
October 1, 1915.....	970,045.50
November 1, 1915.....	222,585.00
November 15, 1915.....	1,462.50
November 21, 1915.....	143,277.50



December 1, 1915.....	\$ 58,750.00
December 2, 1915.....	60,000.00
December 15, 1915.....	8,750.00
January 1, 1916.....	1,512,839.50
February 1, 1916.....	272,360.00
March 1, 1916.....	320,930.00
March 2, 1916.....	537,999.38
March 15, 1916.....	40,890.00
March 21, 1916.....	38,000.00
April 1, 1916.....	970,045.50
May 1, 1916.....	222,585.00
May 15, 1916.....	1,462.50
May 21, 1916.....	143,277.50
June 1, 1916.....	58,750.00
June 2, 1916.....	60,000.00
June 15, 1916.....	8,750.00
July 1, 1916.....	1,511,939.50
Totals .....	<u>\$7,270.095.00</u>

This total represents amounts which the Boston and Maine Railroad was obligated to pay and did pay, but does not include interest and commissions on Boston and Maine notes paid in advance to June 30, inclusive, in connection with extensions of September 2, 1915, March 2, 1916, and June 20, 1916, and amounting to \$844,497.82.

8. At the close of business on August 17, 1916, the defendant had on deposit and in its offices \$8,107,717.26.

The defendant owns the following securities, of the approximate value indicated, taking face value where there are no market quotations:—

5,619 shares Boston and Lowell Railroad Corporation, at 130.....	\$730,470.00
3,335 shares Concord & Montreal Railroad, at 90..	300,150.00

5% five-year gold notes, Maine Railways Companies, due April 1, 1919, no quotation, par value 100 .....	\$124,310.00
Notes of the Fitchburg Railroad Company amounting, at face value, to.....	750,000.00
Notes of the Connecticut River Railroad Company amounting, at face value, to.....	485,000.00
	<hr/>
	\$2,389,930.00

The total quick assets available for paying the defendant's maturing obligations are, therefore, approximately .....\$10,497,647.26

The defendant owns certain other securities which are of doubtful value, and which it is impossible to negotiate.

9. The financial results of operations of the road during the last four fiscal years are as follows:—

For the year ending June 13, 1913, there was a surplus available for dividends, if not used in paying current obligations, of only \$49,696.82.

For the year ending June 30, 1914, there was a deficit of \$2,044,742.01.

For the year ending June 30, 1915, there was a deficit of \$334,462.13.

For the year ending June 30, 1916, there was a surplus available for dividends, if not used in paying current obligations, of \$4,065,691.09.

This increase in net earnings for the year last mentioned, however, is of uncertain duration, as the results of operations in that year were abnormal both as to the increase in revenue and as to decrease in maintenance expense.

10. During the two fiscal years ending June 30, 1915, the defendant, after paying its operating expenses, was not able to pay its fixed charges out of earnings, but was obliged to meet the same, to the extent of more than \$2,500,000, out of available capital assets. This sum at the time expended represented an actual shrinkage in the capital of the company to that extent.

11. While the defendant has been obliged thus to encroach upon its capital assets to meet in part its obligations, it has been and still is in urgent need of funds for improvements essential to a reasonably profitable and successful operation under existing business conditions. Investigations have been made by officers of defendant and by experts employed by the directors for the purpose of determining how much money ought to be expended on the property for the purpose of placing it in an efficient operating condition. It is absolutely necessary to expend large sums during the next five years for new bridges, increased track and yard room, interlocking signals, elimination of grade crossings under orders of the public authorities, locomotives and cars, and other improvements necessary for the economical operation of the railroad. The total amount reasonably necessary to be expended for these purposes, within that period, is not less than \$10,000,000, and a much larger sum ought to be expended and could be expended to great advantage.

Contractual obligations of the defendant to the amount of \$5,391,000 mature on or before the first day of January next for replacement, equipment, bridges and other things required for operating its railroad system, namely, locomotives and cars, including steel under-frames, \$2,232,000; rails and track fastenings, approximately \$1,060,000; additions to freight yards, \$386,000; additional engine-house facilities, \$513,000; new bridges, \$260,000, and many other items of like general character aggregating \$940,000.

12. The inability of the defendant as aforesaid to earn its fixed charges and operating expenses has resulted in a great decline in the market value of its securities. In 1912 the market value of its stock fell below par and has been as low as \$20 a share, its present market value being under \$43 per share. By the laws of the states under which the defendant is incorporated new stock can not be allotted to stockholders or sold at auction at less than par.

The defendant's credit is so poor that it can not issue bonds at a price which would justify the directors in raising money

by this means—nor can it raise money by the issue of short-term notes.

The consequence is that the defendant can raise no money for the improvements which are so urgently needed.

For the preservation of the property, for the rendering of proper service to the public by the efficient operation of the railroad, for the protection of the interests of the creditors and stockholders, it is necessary that the defendant should be put in a position where it can raise money by the issuance of obligations which will take precedence over the existing fixed obligations, a result which can be accomplished only by the issuance of certificates by a receiver appointed by this court.

13. The floating indebtedness of the defendant on February 1, 1914, was represented by short-term notes aggregating \$27,000,000, of which \$10,000,000 were due February 3, 1914, and \$17,000,000 were due June 2, 1914. Of the \$10,000,000 of notes due on said February 3, 1914, \$9,270,000 were extended to June 2, 1914.

Through the most active efforts on the part of the defendant and upon representation that a reorganization of the properties operated by the defendant would be attempted upon such a basis as to enable it to pay its indebtedness, \$22,238,000 of said notes were extended to March 2, 1915; of the balance, \$2,963,000 were paid by exchange of Maine Railways Companies' notes under the terms of the defendant's offer, leaving \$1,069,000 unextended, upon \$730,000 of which suits were brought. Necessary legislation to effect such reorganization not having been secured by said last named dates, with great difficulty \$17,082,500 of the notes falling due on said March 2, 1915, were extended to September 2, 1915. At the same time, of the balance, \$5,216,500 were paid by the further exchange of Maine Railways Companies' notes and \$202,000 were unextended, so that on September 2, 1915, notes of the Boston and Maine Railroad to the amount of \$17,284,500 fell due. Of the notes falling due September 2, 1915, the company, still hoping to succeed in

its reorganization plans, extended \$13,296,060 to March 2, 1916, and paid with Maine Railways Companies' notes \$3,691,040 on account of the others.

Of certain notes falling due March 2, 1916, \$13,305,060 were extended to June 2, 1916, and on said June 2, \$13,280,160 were extended to July 17, 1916, and on the last named date \$13,100,560 were extended to August 31, 1916, as aforesaid. As stated in the sixth paragraph of the bill, there are now outstanding of said notes \$13,306,060, of which \$205,500 which matured in March, June and July of 1916 are outstanding and unpaid.

Suits were brought, following each of said extensions, by note holders who refused to extend their notes, the total number of said suits being over fifty. On bringing said suits attachments of the defendant's real or personal property have invariably been made, with the result that the defendant has been seriously inconvenienced in the operation of its railroad; it has been unable to sell land not required for railroad purposes, resulting in such property lying idle and unproductive; its materials used in its shops have been attached and serious delay and expense have followed before such property could be released from attachment; money due the defendant in the hands of shippers and others has been trustee, and the releasing of such attachments has involved delay, annoyance and expense.

All of these suits have gone to judgment, and judgments aggregating more than \$1,500,000 have been paid. The result is that those note holders who have pursued diligently their legal rights have secured the payment in full of their notes, while those who have been cooperating with the defendant, in attempting to keep the property in the hands of its stockholders, have had to be content with the payment of interest on their notes.

14. For more than a year all of the real estate of the company lying in Massachusetts has been under an attachment for \$4,000,000 in a suit brought against the company by the Hamp-

den Railroad Corporation for damages for an alleged breach of the company's agreement to take a lease of the railroad of said company. Said suit is still pending and said attachment impairs the credit of the defendant company and renders it still more difficult and impossible for the company to obtain funds needed for improvements and repairs or to meet its obligations.

15. Although the defendant has made every effort to procure in the States of Maine, New Hampshire and Massachusetts the legislation necessary to enable it to effect a reorganization of the railroads operated by it, it has been only partially successful. Such legislation has been secured in Maine and Massachusetts, but not in New Hampshire, and there appears at the present time to be no prospect that it will be secured in the latter state in time to permit a reorganization that will relieve the defendant from its financial difficulties. Without such reorganization it will be impossible for the defendant to obtain in any way the funds necessary to pay its debts as they fall due.

The defendant has heretofore procured the various extensions of the notes above set forth in the hope and belief that such reorganization could be effected and the best interests of both the creditors and stockholders be thereby most effectually guarded; but, in view of its repeated failures in this respect, it would not be justified in seeking a further extension of the notes that will fall due on August 31, 1916, nor is it probable that it could procure such extensions in sufficient numbers and amounts to enable it successfully to deal with the situation, or to avert the financial disasters hereinafter specified.

16. Your complainant is informed and believes and therefore upon information and belief avers that it is inevitable that the defendant will, immediately after August 31, 1916, be faced with over thirteen millions of dollars of its overdue notes, which it can not pay; that undoubtedly large numbers of the holders of said notes, of whom there are now about 372, will immediately bring suits against the defendant to recover the same.

Upon information and belief the complainant further avers that on August 31, 1916, payment of said \$2,300,000 of said notes of the Vermont Valley Railroad endorsed by the defendant as aforesaid will be demanded of the defendant, and for nonpayment thereof suits to recover the amount thereof will be brought against the defendant; that suits will invariably be accompanied by attachments of its available property; that such suits will be brought in many different courts, in different states, and wherever any property of the defendant can be found; that there will result a multiplicity of suits and a race of diligence to secure such attachments in order that those who act most speedily may get payment in full of their notes, while other creditors less diligent may be thereby required to suffer great loss; that strenuous attempts will be made by individual creditors to secure early judgments and priorities; that, in the rush for security, attachments and levies will be made upon the engines, cars and rolling stock of the defendant, and upon its fuel, material and supplies indispensable to the operation of the system; that attachments will also be placed upon all the funds of the defendant and upon all available revenues; that the defendant will be without means of dissolving such attachments and will be unable to use in carrying on its business the property attached; and that if this race of diligence is allowed to go on, great loss and injustice will be inflicted upon the bondholders of the defendant company, whose obligations are not yet due and will not fall due for a considerable time, and who will be unable to protect themselves except through the relief here sought.

And your complainant is further informed and believes and therefore upon information and belief alleges that as the result of such suit, attachments and levies the defendant will be seriously hindered in the operation of its trains, and will be unable to perform its duties as a common carrier and as a carrier of United States mail, or to discharge its duties to the public; that in the proper transaction of its business it is necessary for the

defendant to interchange freight with other railroads and to pay promptly all traffic balances that may from time to time become due such other railroads, and its inability to do so because of attachments of its revenues will render it impossible for it to continue such interchange, resulting in great loss of business and income; that the leases and contracts under which the defendant is operating its system of railroads as above set forth call for the prompt payment by the defendant of the rentals and other charges provided for therein, and most, if not all, of them are subject to forfeiture for nonpayment, so that the inability of the defendant to meet said payments because of the loss of income and the tying up of its revenues by such attachments will subject the defendant to such forfeitures and will inevitably lead to the disintegration of the system and to a chaotic condition of the whole transportation service of the defendant, which will be ruinous financially to the defendant and many of its subsidiary companies, and will occasion great inconvenience and loss to all the communities which depend upon them for service; that, if permitted to go on without the interference of this court, such suits, attachments and levies will result in forced sales of much of the defendant's property at prices far below the real value, to the great loss of the defendant and of all its creditors except those upon whose judgments such sales are made; and that great waste and loss can be avoided, and the property preserved for equitable distribution among those entitled to it, only by the intervention of a court of equity and the granting of equitable relief, including the appointment of a receiver.

Wherefore, for the equal protection of the rights not only of your complainant and other holders of the promissory notes of the defendant, but of all its creditors, including holders of bonds that will not fall due for a long time to come, as well as for the protection of the stockholders of the defendant whose property is in imminent danger of being wasted, and of the public which is vitally interested in the continuous and uninter-



rupted operation of this great transportation system, the intervention of a court of equity is imperatively required, especially for the timely appointment of a receiver to take charge of and preserve the property of the defendant, and to collect and receive and properly appropriate the income thereof, until the final decree of the court in the premises.

17. This suit is of a civil nature, in equity, between citizens of different states, wherein the matter in controversy as aforesaid exceeds, exclusive of interest and costs, the sum or value of \$3,000.

Inasmuch, therefore, as your complainant has no adequate remedy at law for the aforesaid grievances and can have relief only in equity, your complainant files this bill of complaint and prays for the equitable relief as follows:

(1) That the rights of your complainant and of all other creditors of the defendant may be ascertained and decreed, and that the court fully administer the property and funds in which the defendant is interested, constituting the entire railroad system and other assets of the defendant, and ascertain the several and respective liens and priorities existing upon each and every part of said system, and enforce and decree the rights, liens and equities of the creditors of the defendant as the same may be finally ascertained by the court.

(2) That the court forthwith appoint a receiver of all and singular the property and assets operated, held, owned, or controlled by the defendant, including its entire railroad system, and all the lands, tracks, terminal facilities, rolling stock, franchises, rights, materials, machinery, supplies, book accounts, choses in action, shares of stock, bonds and other property, real and personal, of every description and wherever situated, belonging to the defendant or in which it has an interest, with full power and authority to demand, sue for, collect, receive and take into possession the goods, chattels, rights, credits, moneys, effects, lands, tenements, books, papers and property of every description belonging to the defendant, and with all the incidental powers ordinarily vested in receivers in like

cases; and also with full power and authority to run and operate all the railroads and property owned or controlled by the defendant, or in which the defendant has such right or interest, and to collect and receive all the rents, issues, earnings and profits thereof, and to apply the said income and receipts thereof under the direction and order of the court, for such period as the court shall order; to protect and preserve the corporate franchises, privileges and property and to preserve the corporate existence of the defendant; to protect and preserve the said railroads and property, real and personal, from being sacrificed under any proceedings which can or may be taken, likely to prejudice and sacrifice the same; to appoint such agents and attorneys as may be necessary for the proper handling of such property and business; to do any and all other acts which may be necessary to preserve the valuable rights, property and franchises of the defendant; and to exercise such further powers as the court may from time to time grant, including the power to borrow money on receiver's certificates, or otherwise, as may be necessary in connection with its administration of the property and assets of the defendant.

(3) That, because of the imminence of the danger pending the appointment of a permanent receiver, this court appoint a temporary receiver to exercise for the time being the powers and authority above specified, so far as they may be appropriate.

(4) That all creditors and stockholders and other persons be enjoined from instituting or prosecuting, or continuing the prosecution of, any actions, suits, or proceedings at law or in equity or under any statute against the defendant in any court, wherever situated, and from levying any attachments, executions, or other processes upon or against any of the property of the defendant, or from taking or attempting to take into their possession the property of the defendant or any part thereof, or any property of which the defendant has the right of possession until the further order of the court.

(5) That the defendant, its officers, agents and employees and all persons claiming and acting by, through and under it,

and all other persons, be enjoined and restrained from interfering with the said receivers in taking possession of and managing the said property and business.

(6) That at such time or times as may be found just and proper the property and franchises of the defendant may be ordered to be sold as an entirety, to be held, exercised and enjoyed by the purchaser, or in such parcels and at such places and in such manner and upon such terms and conditions as this court shall deem just and equitable, and the proceeds of any such sale or sales distributed among those entitled thereto, or that the property of the defendant, after satisfaction of the claims of creditors, may be returned to it.

(7) That your complainant may have such other and further relief in the premises as the nature of the case may require and as to the court may seem proper.

(8) That the defendant be required, pursuant to the rules and practice of the court, to answer all and singular the matters hereinbefore stated, but not under oath, answer under oath being hereby expressly waived, and further to perform and abide by such order, direction and decree herein as to the court shall seem meet.

May it please the court to grant unto your complainant a writ of subpoena to be issued out of and under the seal of this court, and directed to the defendant, requiring it to appear on a certain day before the court and make answer as aforesaid.

And may it please the court to grant unto your complainant a writ of injunction to be issued out of and under the seal of the court, and to be directed to the defendant and to its officers and agents and all persons claiming and acting by, through, or under the defendant, and to all other persons, enjoining and restraining them from interfering with the said receivers in taking possession of or in managing the said property and business.

Intercontinental Rubber Company,  
By Boyd B. Jones, its Solicitor.

Dated August 21, 1916.

State of New York, County of New York, ss.

George H. Carnahan, being duly sworn, deposes and says that he is the president of the Intercontinental Rubber Company, the complainant above named; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true to the knowledge of deponent, except as to matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true.

George H. Carnahan,

Sworn to before me this twenty-first day of August, 1916.

[SEAL]

Willard P. Smith, Notary Public.

EXHIBIT A-1

C 60      \$10,000.00      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Ten Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof

shall be, and hereby is, extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$6500 shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$5.20 cancelled internal revenue stamps on foregoing note.

EXHIBIT A-2

C 61      \$10,000.00      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Ten Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, shall be, and hereby is, extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$6500, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$5.20 cancelled internal revenue stamps on foregoing note.

EXHIBIT A-3

C 62      \$10,000.00      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Ten Thousand Dollars,

at the office of J. P. Morgan, New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,  
By W. J. Hobbs, Vice-President,  
Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to

September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$6500, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$5.20 cancelled internal revenue stamps on foregoing note.

#### EXHIBIT A-4

No. B 92      \$5,000.00      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Five Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Acknowledgment on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the

Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$3250, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$2.64 cancelled internal revenue stamps on foregoing note.

EXHIBIT A-5

No. B 93      \$5,000.00      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Five Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.



*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$3250, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$2.64 cancelled internal revenue stamps on foregoing note.

## EXHIBIT A-6

No. B 94      \$5,000.00      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Five Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$3250, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$2.64 cancelled internal revenue stamps on foregoing note.

**EXHIBIT A-7**

No. B 95      \$5,000.00'      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Five Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$3250, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$2.64 cancelled internal revenue stamps on foregoing note.

## EXHIBIT A-8

B 96                      \$5,000.00                      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Five Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$3250, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$2.64 cancelled internal revenue stamps on foregoing note.

**EXHIBIT A-9**

No. B 97      \$5,000.00      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Five Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$3250, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$2.64 cancelled internal revenue stamps on foregoing note.

## EXHIBIT A-10

No. B 613      \$5,000.00      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Five Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$3250, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$2.64 cancelled internal revenue stamps on foregoing note.

## EXHIBIT A-11

No. B 614      \$5,000.00      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Five Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

*(Notations appearing on back)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$3250, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$2.64 cancelled internal revenue stamps on foregoing note

EXHIBIT A-12

No. B 615      \$5,000.00      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Five Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.\*

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$3250, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$2.64 cancelled internal revenue stamps on foregoing note.

## EXHIBIT A-13

No. B 422      \$5,000.00      Boston, Mass., June 2, 1914.

On March 2, 1915, for value received, the Boston & Maine Railroad promises to pay to itself or order,

Five Thousand Dollars,

at the office of J. P. Morgan & Co., New York City, or at the Old Colony Trust Company, Boston, Mass.

Boston & Maine Railroad,

By W. J. Hobbs, Vice-President,

Herbert E. Fisher, Treasurer.

*(Endorsement on back)*

Boston & Maine Railroad,

By Herbert E. Fisher, Treasurer.

\* The holder of this note agrees with the Boston and Maine Railroad that the time of payment of the present face value thereof shall be and hereby is extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.



*(Notations appearing on note)*

Thirty-five per cent. (35%) of the amount due on this note on March 2, 1915, has been paid and the holder agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be, and hereby is, extended to September 2, 1915, the said railroad having paid interest on the amount thereof to that date.

\$1,000 of the amount due on this note on September 2, 1915, has been paid and the holder thereof agrees with the Boston & Maine Railroad that the time of payment of the remaining principal thereof shall be and hereby is extended to March 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof, being \$2250, shall be, and hereby is, extended to June 2, 1916, the said railroad having paid interest on the amount thereof to that date.

The holder of this note agrees with the Boston & Maine Railroad that the time of payment of the present face value thereof shall be, and hereby is, extended to July 17, 1916, the said railroad having paid interest on the amount thereof to that date.

\$2.64 internal revenue stamps on foregoing note.

**No. 14****Complaint by Supply Dealer for Receiver of Railway Company**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION  
No. 445. IN EQUITY

American Steel Foundries, Complainant,  
against  
The Chicago, Rock Island & Pacific Railway Company,  
Defendant.

*Bill of Complaint*

*To the Honorable the Judges of the District Court of the  
United States for the Northern District of Illinois, East-  
ern Division:*

American Steel Foundries brings this bill of complaint against The Chicago, Rock Island & Pacific Railway Company, and thereupon the complainant complains and alleges as follows:

I. The complainant, American Steel Foundries, at all the times wherein it is hereinafter mentioned, was and it now is a corporation organized and existing under the laws of the State of New Jersey, having its office and principal place of business at Jersey City in the County of Hudson in said state, and a citizen of said state and a resident of the District of New Jersey.

II. At all the times hereinafter mentioned, the defendant, The Chicago, Rock Island & Pacific Railway Company (hereinafter called the "Railway Company"), was and it now is a corporation organized and existing under the laws of the States of Illinois and Iowa, having its office and principal place of business in the City of Chicago, County of Cook, and State of Illinois, and a citizen of said State of Illinois, and a resident of the Northern District thereof, and operating a line of railroad extending into and through the States of Illinois,

Iowa, Minnesota, South Dakota, Nebraska, Kansas, Colorado, Missouri, Oklahoma, New Mexico, Arkansas. Tennessee Louisiana and Texas.

III. That there will become and be due and owing from the Railway Company during the month of April, 1915, namely, on the thirtieth day of such month, a time loan, the principal whereof amounts to \$2,500,000; that during the month of May, 1915, there will become and be due and owing from the Railway Company interest payments amounting to the sum of \$373,707, or thereabouts, on May 1, 1915, the principal of certain bonds of the Railway Company then maturing amounting to the sum of \$1,494,000, and the principal of certain equipment notes amounting to the sum of \$505,000, guaranteed interest aggregating \$125,000, or a total in such two months of the sum of more than \$4,997,707; that the Railway Company is and will be totally unable to meet such current demands out of its current resources.

IV. That the creditors of the Railway Company are located in many jurisdictions and the complainant fears that certain of such creditors will commence suits against the Railway Company, and that attempts may be made to attach its properties or parts thereof; that certain of the creditors of the Railway Company will probably claim and attempt to enforce liens against the property owned, operated or controlled by it, and that there is great danger that its creditors will levy upon its rolling stock, equipment and supplies, earnings and bank accounts, and thereby prevent it from continuing the operation of its system of railways; that there is consequently great danger that the system of railways owned and operated by the Railway Company will be disrupted and disorganized and that the Railway Company will be unable to continue the operation thereof; that it is of vital importance not only to the holders of the bonds and the other obligations of the Railway Company, the holders of the underlying bonds and other creditors of the Railway Company, but also the public, that the operation of said system of railways

should not be interrupted or disorganized until the rights of the various creditors can be ascertained and an opportunity given for some reorganization or readjustment of the properties and the securities and obligations of the Railway Company.

V. That the Railway Company is indebted to the complainant in the sum of \$15,818.46 for materials furnished by it to the Railway Company at the request of the Railway Company and for which the Railway Company agreed to pay to the complainant the sum of \$15,818.46; that payment of said sum has been duly demanded by the complainant and refused by the Railway Company and that said sum is now due and unpaid although such indebtedness is admitted by the Railway Company to be due and payable to the complainant; that the Railway Company claims to be unable to make such payment by reason of its financial condition; that said materials were furnished to the Railway Company by the complainant for the purpose of enabling it to operate its lines of railroad and to discharge its obligations under various franchises and privileges granted to it in connection therewith.

VI. That the complainant is informed and believes that the only means whereby the Railway Company can pay its floating indebtedness and discharge its current obligations are by the continued maintenance and operation of its system of railways as a whole and by the uninterrupted use thereof; that any suits upon or process against its properties or revenues will seriously cripple and diminish, if not destroy, its power safely to maintain and successfully to operate said railroads and their appurtenances; that notwithstanding the fact that every reasonable effort has been made to provide for the payment of the indebtedness of the Railway Company or for the extension of the time of payment thereof, such efforts have proved unsuccessful, and that unless some definite action is taken on behalf of all creditors of the Railway Company so that the operation of its system of railroads

may be kept intact, great and severe and irreparable loss will be inflicted upon its creditors.

VII. That the complainant believes that unless this court, in view of the facts above stated, shall take the railroads and property of the Railway Company into judicial custody for the protection of every interest therein, immediately upon default individual creditors will assert their rights and remedies in different courts; that the result will be a multiplicity of suits and a race of diligence; that attempts will be made to secure judgments and priorities; that levies will be made upon cars, rolling stock, materials and supplies indispensable to the operation of said lines of railroad, which will greatly interfere with and ultimately prevent the Railway Company from the proper performance of its duties as a common carrier, and will seriously diminish its earnings; that it will thereupon become impossible to operate said lines of railroad as a whole and thereby serious inconvenience will be caused to the public.

VIII. That any attempt by the complainant to enforce at law its claims as a general creditor would precipitate similar action on the part of other creditors and that this in turn would lead to wasteful strife and controversy which the complainant believes can be avoided if the property shall be preserved for the benefit of all creditors and stockholders of the Railway Company by the intervention of a court of equity and the granting of equitable relief, including the appointment of a receiver or receivers of the Railway Company.

IX. That by reason, among others, of the foregoing facts and circumstances, the complainant alleges that the interference of a court of equity for the protection of its rights and the rights of all other parties in interest is immediately required, and that there is necessity for the immediate appointment of a receiver or receivers to take charge of and preserve the property of the Railway Company, to continue the operation of its lines of railroad for the accommodation of the public, and to collect and receive and properly to appropriate the income of and from said property under the

orders of this court to be made from time to time until its final decree in the premises.

X. That the matter in controversy herein exceeds the sum of \$5,000, exclusive of interest and costs.

Wherefore, and forasmuch as the complainant is remediless in the premises under and by the strict rules of the common law, and can have relief only in a court of equity, where matters of this nature are properly cognizable and reviewable, it prays that a receiver or receivers be appointed by this honorable court of all and singular the property of the Railway Company, together with all of the tolls, earnings, income, revenue, rents, issues and profits thereof, with the usual powers of receivers in such cases, and with full power and authority to take possession of all the property of the Railway Company, including any and all properties leased to the Railway Company, and to operate the same and to collect and receive the tolls, earnings, income, revenue, rents, issues and profits thereof and apply the same under the order and decree of this court; that the Railway Company be required to transfer and turn over to such receiver or receivers all of its properties and assets of every nature and description; that a writ of injunction issue out of and under the seal of this honorable court, commanding, enjoining and restraining the Railway Company, its officers, directors, agents and employees, and all other persons claiming or pretending to claim under it, and all other persons, firms and corporations whatsoever and wheresoever located, situated or domiciled, from interfering with, transferring, selling or disposing of, attaching, levying upon, or in any manner whatsoever disturbing any part of the property in the possession of such receiver or receivers so to be appointed; and that the complainant may have such other and further relief as equity and good conscience may ordain.

May it please the court to grant unto the complainant a writ of subpoena to be issued out of and under the seal of this court directed to the defendant, The Chicago, Rock Island

& Pacific Railway Company, requiring it to appear on a day certain before this court, and then and there full, true, direct and perfect answer make to all and singular the allegations herein, but not under oath (answer under oath being hereby expressly waived), and to perform and abide by such orders, directions and decrees herein as to the court shall seem proper.

American Steel Foundries,

[SEAL]

By G. E. Scott, Vice-President.

Attest: F. E. Patterson, Secretary.

Winston, Payne, Strawn & Shaw.

United States of America, Northern District of Illinois, County of Cook, ss.

G. E. Scott, being duly sworn, deposes and says that he is an officer, to wit, the vice-president, of American Steel Foundries, the complainant above named; that he has read the foregoing bill of complaint and knows the contents thereof; that the allegations contained therein in respect of the acts of said American Steel Foundries are true of his knowledge, and that as to all other allegations contained therein he is credibly informed and believes the same to be true.

G. E. Scott.

Subscribed and sworn to before me this 19th day of April, 1915.

[SEAL]

Edward C. Maher.

(Endorsed.) Filed Apl. -20, 1915, at 8:45 o'clock a.m.

T. C. MacMillan, Clerk.

**Form No. 15****Petition by Member for Receiver of Country Club \***

CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI

Thompson Price et al., Plaintiffs,

vs.

Bankers Trust Company, Defendant.

Plaintiffs state that the said Bankers Trust Company and the said Whitener-London Realty Company, defendants herein, are both corporations organized under the laws of the State of Missouri, and have their principal offices in the said City of St. Louis, Mo., and that the said Arcadia Country Club has also its principal office in the said City of St. Louis.

“Plaintiffs state that said Thompson Price, F. Garrison, O. C. Conkling, C. E. M. Champ, T. C. Kimber, are each members of said Arcadia Country Club, and that the said plaintiff, Dixon-Smith Engineering Company, and said Henry C. Muskopf, are creditors of said Arcadia Country Club, the said Dixon-Smith being a creditor in the sum of \$569.02, and the said Henry C. Muskopf is a creditor to the extent of \$275.43, and that all of said plaintiffs bring this suit on behalf of all persons similarly situated who are willing to share the costs hereof.

“That the said Arcadia Country Club was organized under the laws of the State of Missouri, under art. X, ch. 33, of the Revised Statutes of the State of Missouri, 1909, by an order of the circuit court of the said City of St. Louis, entered on the eighth day of February, 1911. That the articles of association of said club were duly recorded in the office of the recorder of said City of St. Louis, on February 8, 1911, and that a certificate of incorporation was issued to said club by the secretary of state of the State of Missouri, on the tenth day of February, 1911. That a copy of said charter and said certificate of incorporation, marked Exhibits 1 and 2, are hereto

\* Petition taken from Price v. Bankers Trust Co. (1915), 178 S. W. 746.



attached and made a part hereof. That said club was incorporated without any capital stock, and that the purposes of said club, as set out in art. VI of its charter, are as follows:

“Art. VI. The purposes and scope of this corporation shall be: (1) The study of physical science and the encouragement of debating, reading and literature. (2) The encouragement of rational social amusements. (3) Instruction in and the playing of lawful games of all kinds, both within doors and without. (4) Instructions in athletics and the encouragement of the same, and of physical training and development of all kinds; and to accomplish such object, to acquire, own, operate and maintain for the use of its members, a clubhouse and grounds, and it is hereby expressly declared that this association is not formed for pecuniary profit and shall not be run or operated for pecuniary profit.

“That said club by deeds duly recorded, acquired title to 652 acres of land in Iowa County, Missouri, on the —— day of ——, 1911, and the —— day of ——, 1911, and acquired title to 5,036.44 acres in said Iowa County and also in St. Francois County, in the said State of Missouri, on February 18, 1911, by deed from the Whitener-London Realty Company to said club, dated February 18, 1911, and duly recorded in the recorder’s office of said Iowa County, on March 1, 1911, in book 57, p. 432.

“That the consideration of said last-mentioned deed was the sum of \$100,000, and that your petitioners aver that said consideration was attempted to be paid by giving memberships in said club to said grantor amounting to the sum of \$50,000 and that said club gave a deed of trust on said land to secure notes aggregating approximately \$49,000; said deed of trust being dated February 26, 1911, and being recorded in the recorder’s office of Iowa County, Missouri, in book 57, p. 426. That said notes so secured by said deed of trust matured at various times and were in different amounts.

“That thereafter the said club undertook to make a contract for the construction of a certain dam located on said

652 acres with the said Whitener-London Realty Company and that the consideration to be paid for said dam, under said alleged contract, was the sum of \$30,000, which said amount was represented by notes of said club payable to said company and which said notes were secured by an alleged deed of trust dated July 24, 1911, executed by the said club to the said Banker's Trust Company to secure said Whitener-London Realty Company, and covering said 652 acres. That said notes matured at various times as shown by said deed of trust and were in different amounts. That said alleged deed of trust undertook to reserve from the property therein conveyed certain lots aggregating eighty-two, which had been sold to various members of said club.

"That said alleged contract for the construction of said dam provided that seventy-five per cent. of all moneys to be received by said club from the sale of memberships and bungalow sites, or any other source of income derived by said club, should be applied on the said notes secured by said deed of trust. That said plaintiffs file herewith a copy of said alleged deed of trust on said 652 acres, marked Exhibit '3' and made a part hereof, and also a copy of said alleged dam contract, dated July 31, 1911, and of the bond thereto attached, executed by the Whitener-London Realty Company for the faithful construction of said dam, marked Exhibits '4' and '5' and made parts hereof.

"Plaintiffs further aver that said dam was constructed, but not in accordance with the plans and specifications referred to in said contract, and that said dam is now leaking badly and that said club has never up to this time accepted said dam, because of the failure of the said Whitener-London Realty Company to construct said dam in accordance with said plans and specifications. Plaintiffs further aver that said club has never paid one cent under said alleged dam contract.

"Plaintiffs further aver that the said Whitener-London Realty Company had certain business dealings with the said

Bankers Trust Company, and that said Bankers Trust Company claims to be the holder of said \$30,000 of notes hereinabove described and of said \$49,000 of notes hereinabove described. That neither said notes nor any interest thereon have been paid by said club. That the said Bankers Trust Company is not the innocent holder of said notes, and had full knowledge of the limited power of said club under its charter, and said acts were ultra vires. That said Bankers Trust Company undertook to advertise for sale said 652 acres of ground under said deed of trust of July 24, 1911, but subsequently withdrew said advertisement of said sale, but has declared its intention of again advertising said property for sale.

“Plaintiffs further aver that the said club undertook to quitclaim to the said Whitener-London Realty Company the said 5,036.44 acres of ground hereinabove described after the execution of said alleged deed of trust of February 25, 1911, and after the time that the said Bankers Trust Company claimed to have acquired said \$49,000 of notes.

“Plaintiffs further aver that the said Bankers Trust Company claims not to have authorized the said quitclaim deed, and the said Bankers Trust Company is still holding said \$49,000 of notes of said club, as well as said \$30,000 of notes. That after the formation of said club about \$28,000 was paid in by the members of said club. That the books and records of said club were kept in such condition that it has been impossible to secure a proper audit thereof. That the former officers of said club have retired and new officers have been elected. That the former officers of said club and the new officers thereof have not been able to agree as to various items of disbursement on account of said club, and for that reason, and because of the condition of the said books and records, they have been unable to make a proper accounting to the members of said club. That many of the members of said club on account of the various controversies hereinabove set forth, and because of the failure of the club’s

purposes originally outlined herein, have declined to pay their club dues for over a year and a half past, and that said club has not been able to collect said dues from its said members.

“Plaintiffs further aver that about 200 lots for bungalow sites in said 652 acres were sold to various members of said club, but that only eighty-two of said lots, as above stated, were reserved in the execution of said alleged deed of trust, and that, if said Bankers Trust Company is permitted to foreclose said alleged deed of trust, then the said members of said club, who have bought and paid for over 100 lots in said 652 acres will be deprived of their said lots. That various claims have been presented against said club and that said club has no assets on hand with which to pay said claims. That Merrel S. McCarty has obtained judgment against said club in the circuit court of the City of St. Louis in the sum of \$996.87 and that said judgment has not been paid. That the corporate purposes of said club have utterly failed and that a receiver should be appointed to take charge of said club, for the purpose of determining and protecting the rights of the members of said club, and securing an accounting as to the affairs of said club. That the said Bankers Trust Company should be enjoined from foreclosing under said alleged deeds of trust, and that said alleged deeds of trust and the said notes secured thereby should be cancelled.

“Wherefore plaintiffs pray that a temporary receiver may be appointed herein to take charge of the assets of the said club, and that upon final hearing, the said temporary receiver be made permanent; that said receiver be directed to make an accounting herein of the affairs of said club and of all debts due by said club and collect dues from the members of said club, and pay its debts; that the said alleged deeds of trust and the said alleged notes hereinabove described be canceled.

“The plaintiffs further pray in the alternative that, if said alleged deed of trust on said 652 acres of land and

the notes thereby secured be not canceled, then the said Bankers Trust Company shall be required to release to the members of said club the lots in said 652 acres which are not excepted in said deed of trust.

“Plaintiffs further pray for such other and further relief as to the court may seem proper.”

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### Form No. 16

#### Ex Parte Petition of Director for Dissolution of Corporation and Receiver

(Form under Civil Code Procedure)

The ——— Automobile Co., a corporation organized under the laws of ———, by ———, its board of directors

#### *Petition*

The petitioners state that The ——— Automobile Company is a corporation organized under the laws of the State of Ohio, with its principal place of business in the City of ———, ——— County, Ohio; that the petitioners, ———, constitute a majority of the board of directors of said company and have the management and control of said company in their hands, and that said directors own stock of said company in the amounts as follows: \$———, \$———, \$———, \$———, and as such owners of stock in said company represent in all ——— shares of the stock of said company, which is more than one-third of the capital stock of said company.

The petitioners state that the said company is the owner of certain real estate and personal property, including choses in action, as is more particularly described in a statement attached to the petition and made part thereof.

Petitioners state that they have attached to this petition and made part thereof:

1. A full and true inventory and full description of all the estate, real and personal, in law and equity of the cor-

poration and of all the books, vouchers and securities relating thereto.

2. A full and true account of the capital stock of the corporation, specifying the names of the stockholders, their residence, the number of shares belonging to each, the amount paid in upon such shares respectively and the amount still due thereon.

3. A statement of all the incumbrances on the property of the corporation, and of all engagements entered into by it which have not been fully satisfied or cancelled, specifying the place of residence of each creditor, and of every person to whom such engagements were made and the sum owing to each creditor, the nature of each debt or demand and the true cause and consideration of such indebtedness.

The petitioners further state that said company has been engaged in the general garage business and in the selling of automobile and automobile trucks in the said City of ——— and vicinity; that the business has been unsatisfactory for some time and its stock, property and effects have been so far reduced, by losses or otherwise, that it will not be able to pay all just demands for which it is liable or to afford a reasonable security to those who deal with it.

The petitioners further represent they deem it impossible to continue the business of said company further and that it will be beneficial to the interests of the stockholders and creditors that the corporation be dissolved.

The petitioners further represent that if the company is dissolved and a receiver appointed the assets can be better reduced to cash and the interests of the stockholders and creditors preserved.

Wherefore the petitioners pray for a dissolution of the company and for the appointment of a receiver of the same and of all the assets of the said company and plaintiffs further pray for all other equitable relief in the premises to which the parties are entitled.

———, Attorney for Petitioners.

State of \_\_\_\_\_, \_\_\_\_\_ County, ss.:

\_\_\_\_\_, being first duly sworn, says that he is one of the petitioners in the foregoing petition, and that the facts stated therein are true.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 19—.

[SEAL] \_\_\_\_\_, Notary Public in and for \_\_\_\_\_ County.

No precipe.

#### FORMS OF ANSWERS TO COMPLAINTS AND PETITIONS

### Form No. 17

#### Answer of Manufacturing Company Admitting Acts Complained of

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE  
DISTRICT OF DELAWARE. No. 260. IN EQUITY

Henry A. Hitner and Joseph G. Hitner, trading as "Henry  
A. Hitner's Sons," Complainants,  
against

The Diamond State Steel Company, a corporation of the  
State of Delaware, Defendant

The Answer of The Diamond State Steel Company, Defendant, to the Complainant's Bill of Complaint.

This defendant admits to be true the averments of fact set forth in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 of said bill of complaint, and submits itself to the court for such order or decree as to the court shall seem fit in the premises.

(Signed) The Diamond State Steel Company,

[SEAL] By (signed) Howard T. Wallace, President.

Attest: (Signed) Howard T. Wallace, President.

(Signed) Ward & Gray, Solicitors for Respondent.

State of Delaware, New Castle County, ss.:

Be it remembered, that on this twelfth day of December, A. D. 1904, personally came before me, John F. Neary, a notary public for the State of Delaware, Howard T. Wallace, who, being by me first duly qualified according to law, deposes and says: That he is the president of The Diamond State Steel Company, the respondent in the above recited cause; that he hath read the averments in the bill of complaint filed in this cause, and that the answer of said respondent, so far as it concerns the act and deed of this deponent or of the said company, is true, and so far as it concerns the act and deed of any other person, he believes it to be true.

(Signed) Howard T. Wallace.

Sworn to and subscribed before me this twelfth day of December, A. D. 1904.

[SEAL]

(Signed) John F. Neary, Notary Public.



**Form No. 18****Joint and Several Answer of Light Company, etc., to  
Complaint**

EXHIBIT "C"—STATE OF MICHIGAN—IN THE CIRCUIT COURT  
FOR THE COUNTY OF GENESSEE. IN CHANCERY

The Detroit Trust Company, a corporation, Trustee,  
Complainant,

v.

Fenton Light & Power Company, a corporation, The Inde-  
pendent Power Company, a corporation, The Detroit  
Construction Company, Limited, and George C.  
Webber, Defendants .

*The Joint and Several Answer of the Detroit Construction  
Company, Limited, and George C. Webber, Defendants,  
to the Bill of Complaint Filed by the Above  
Named Complainant*

The defendants last mentioned, for answer to the bill of  
complaint above mentioned, come into the court and say:

1. That they admit paragraphs one and two of the said  
complainant's bill of complaint.

2. That they admit paragraph three of the complainant's  
bill of complaint, except that they deny that the Independent  
Power Company, mentioned in said paragraph, is a compet-  
ing company for the business of the Village of Fenton therein  
alleged.

3. That they neither admit nor deny the facts alleged in  
paragraphs four, five and six of the said complainant's bill of  
complaint, for the reason that they have no information  
sufficient to form a belief thereon.

4. These defendants, further answering, neither admit nor  
deny the allegations contained in the seventh paragraph of  
complainant's said bill of complaint, excepting that on infor-  
mation and belief they deny that the \$30,000 became a  
legal obligation against said defendant corporation, mentioned  
in said paragraph.

5. The said defendants, further answering, say that they neither admit nor deny paragraph eight of said complainant's bill of complaint, for the reason that they have no information in relation thereto sufficient to form a belief thereon.

6. The defendants, further answering, say they neither admit nor deny the allegation contained in paragraph nine of the said bill of complaint, excepting that they deny that any notice was received from the said Trust Company as to the failure of the said Fenton Light & Power Company to pay its interest upon said bonds, and deny that the said Detroit Trust Company, trustee, has ever, prior to the filing of the said bill of complaint, made any demand upon the said Detroit Construction Company, Limited, or the said George C. Webber for any interest upon the said bonds above mentioned.

7. These defendants, further answering, neither admit nor deny the allegations contained in paragraphs ten, eleven, twelve, thirteen and fourteen of said complainant's bill of complaint, for the reason that they have no information sufficient to form a belief in relation thereto.

8. These defendants, further answering, deny the allegations contained in paragraph fifteen of complainant's bill of complaint, and allege that the said George C. Webber, after entering into a contract with the stockholders of the said Fenton Light & Power Company in the manner hereinafter mentioned, sold and assigned said contract to the Detroit Construction Company, Limited, and that thereafter said Detroit Construction Company, Limited, leased the property of the said Fenton Light & Power Company to the Independent Power Company, one of the above named defendants; that the Independent Power Company have carried on the business of the said Fenton Light & Power Company to the best advantage possible, but for reasons hereinafter mentioned, it has no funds belonging to said Fenton Light & Power Company with which to pay the taxes of said Fenton Light & Power Company, and that it is under no obligation to pay

said taxes, or to pay the interest upon the bonds above mentioned; and that the said George C. Webber and Detroit Construction Company, Limited, defendants herein, have no funds in their hands belonging to the said Fenton Light & Power Company, and are under no obligations to pay the taxes upon said property or the interest upon said bonds, for the reasons hereinafter mentioned.

9. These defendants, further answering, say that they admit the allegations contained in paragraph fifteen of the complainant's bill of complaint, except so far as the same are modified by the statements hereinafter made in the answer of these defendants in the nature of a cross-bill annexed hereto.

10. These defendants, further answering, say that they deny the facts alleged in the nineteenth paragraph of the complainant's bill of complaint, and further deny the conclusion drawn by the said complainant as to its rights as set forth in said nineteenth paragraph of said complainant's bill of complaint, and allege that the property of the said Fenton Light & Power Company is now in better condition than it was at the time when George C. Webber took possession of the same; and these defendants, further answering, deny that the said complainant is entitled to any of the relief prayed in the prayer for relief contained in said bill of complaint.

11. These defendants, further answering, desire the benefit of a cross-bill for this answer, and for the purpose thereof, say:

I. That prior to the first day of August, 1912, the above named defendant, George C. Webber and Dr. Oliver H. Lau, chairman of the above named defendant, The Detroit Construction Company, Limited, had a conversation with Joseph H. Crawford, Chester H. Bliss, Fred A. Platt, Thomas F. Stockton and Warren S. Rundell, who then and there claimed to be the owners of all of the capital stock of the Fenton Light & Power Company, above named, and who these cross-complainants desire to have made cross-defendants to this, their answer in the nature of a cross-bill, together with the com-

plainant in said above entitled cause, and the Independent Power Company named as one of the defendants in the above entitled cause;

II. That during the course of the said conversation the said cross-defendants represented to said defendant, George C. Webber, and the said Dr. Oliver H. Lau, that the said Fenton Light & Power Company had during the year then last past produced a gross income of \$11,000 and upwards; that the total expenses in carrying on the business of the said company last mentioned during the same period were less than \$8,000, and that the net profits of the business of said concern for the same period were upwards of \$4,000.

III. That they then and there stated also to this defendant, George C. Webber and said Oliver H. Lau, that the said company last mentioned then had a contract for lighting the Village of Fenton upon which the said company was then receiving an income of five dollars per street light per month, and that they then and there had forty-four street lights in operation, and that they were then consequently receiving from the said Village of Fenton per month \$220 for lighting the said Village of Fenton.

IV. The said defendant, George C. Webber, and the said Oliver H. Lau then and there believed the said several statements made by the said stockholders of the said cross-defendant, Fenton Light & Power Company, and relied upon said statements, and that the said defendant, George C. Webber, then and there entered into the first contract mentioned in paragraph sixteen of the said bill of complaint.

V. That the said George C. Webber would not have entered into said contract last above mentioned if he had not believed the said several statements of the said stockholders, and that he was induced to enter into the same by the fraud of the said stockholders perpetrated in the manner above mentioned; that he did not learn of the said fraud until afterwards in the manner hereinafter mentioned.

VI. That after the said conversation above detailed, the said George C. Webber had another conversation with the said stockholders on or about the first day of November, 1912, and before taking possession of the said plant of the Fenton Light & Power Company in the manner hereinafter mentioned, at which conversation last above mentioned the said Joseph H. Crawford, Chester H. Bliss, Fred A. Platt, Thomas F. Stockton and Warren S. Rundell again reiterated the said statements above mentioned in reference to the gross receipts, the cost of maintenance of the plant of the said Fenton Light & Power Company, and the net profits of the same, and in reference to the contracts with the said company last above mentioned with the said Village of Fenton, and this said defendant, George C. Webber, then and there believed each and every of the said statements so made to him by the stockholders, and relied upon such belief, and relying thereupon, entered into a supplemental agreement substantially as set forth in said paragraph sixteen of said bill of complaint, and on or about the eleventh day of November, 1912, entered into possession of the property of the said Fenton Light & Power Company.

VII. That the said defendant, George C. Webber, would not have entered into said supplemental agreement and would not have entered into possession of the property of the said Fenton Light & Power Company had he not believed the said several statements so made to him by the said stockholders of the said Fenton Light & Power Company at the several times above mentioned.

VIII. These defendants further say that each and every of the said statements above mentioned were false and untrue, and were unknown to be false and untrue by the said several stockholders, and were made for the fraudulent purpose of inducing the said George C. Webber to pay over to them certain moneys provided for in said several agreements made between said George C. Webber and the said several stockholders.

IX. That the said Fenton Light & Power Company had not, during the year prior to about August 1, 1912, received a gross income of \$11,000 and upwards; that they had not received a net income during that period last mentioned of upwards of \$4,000; and that they did not then and there have a contract with the Village of Fenton as then and there claimed, and stated to the said George C. Webber and the said Dr. Oliver H. Lau, the above mentioned.

X. That the said Fenton Light & Power Company had not in the year then last passed prior to on or about the first of November, 1912, received a gross income of upwards of \$11,000; and had not during the said period last above mentioned received a net income of \$4,000; and that the said Fenton Light & Power Company did not then and there have a contract with the Village of Fenton as then and there stated by them, the said stockholders, to the said George C. Webber.

XI. These defendants further say that the said George C. Webber, believing the said several statements, made an assignment of the said several contracts to the said Detroit Construction Company, Limited, and that the said Detroit Construction Company, Limited, thereafter leased the property of the said Fenton Light & Power Company to the Independent Power Company, substantially as set forth in paragraph sixteen of the complainant's bill of complaint.

XII. That the said George C. Webber and Oliver H. Lau communicated to the officers of the said Detroit Construction Company, Limited, and of the said Independent Power Company, the said several statements made to them, and that they, the said George C. Webber and the said Detroit Construction Company, Limited, and the officers thereof, and the said Independent Power Company and the officers thereof, all believed the said statements, and that the said Detroit Construction Company would not have then and there taken an assignment of the said contract had it not then and there believed that the said statements above mentioned were true,

and relied upon them; and that the said Independent Power Company would not have taken any lease of the said premises and property had its officers not then and there believed that the said statements were true.

XIII. That after the said supplemental agreement entered into as hereinafter mentioned was executed, the said George C. Webber took possession of the said property of the said Fenton Light & Power Company, and that after the said assignment and the said lease were made he, the said George C. Webber, continued in possession of said property, acting as an agent of the said Independent Power Company.

XIV. That the said George C. Webber, after taking possession of said property, discovered that it was in a dilapidated and run-down condition, and that it could not be operated to advantage without the expenditure of a large amount thereon, and that the said George C. Webber, for the reasons above mentioned, expended a large amount of money, to wit, the sum of \$700, in his own behalf and in behalf of the said Detroit Construction Company, Limited, and that a much larger amount will be required to be expended upon said plant before the same can be put in a paying condition.

XV. These defendants further say that under the agreement made between George C. Webber and the said stockholders, the said George C. Webber was required to pay and did pay said stockholders a large amount of money for material then on hand, and that he paid to the said stockholders, and to their order, in manner above mentioned, the sum of, to wit, \$750.

XVI. That after the said George C. Webber took possession of said plant and began to operate the same, after he had access to the books of said company, he discovered the falsity of the said several statements above mentioned, but that he continued to operate the said plant in the hope that the same might, by expending more money thereon, be brought to a condition where the same would pay a profit, and that he had several conversations with the said stockholders wherein they attempted to make some compromise in reference to the difference

between them, and for that reason he continued in the occupancy of said property in the attempt to make the same pay a profit.

XVII. That the Village of Fenton, instead of paying the said Fenton Light & Power Company at the rate of \$220 per month in the manner above mentioned, had not for upwards of two months prior to the time of the said George C. Webber taking possession of the said plant, paid the said Fenton Power & Light Company any money whatever, but it disputed the right of the said Fenton Light & Power Company to collect any money from it whatever; that the said George C. Webber continued to furnish the said Village of Fenton with light in the hopes that he would ultimately come to some just settlement and agreement between himself and the said Detroit Construction Company, Limited, and the Fenton Light & Power Company and the said several stockholders and the said village.

XVIII. These defendants, further answering, say that by reason of the dilapidated condition of the said plant, that even had that said Village of Fenton paid the amount which the said stockholders represented they were paying for light from the said Fenton Light & Power Company, the said plant could not have been run at a profit.

XIX. Defendants further say that after examination of the books of the said Fenton Light & Power Company it was ascertained that the total income of the said company for the year 1911, the last calendar year before the said several representations were made to the said George C. Webber and said Dr. Oliver H. Lau, were the sum of eight thousand five hundred thirty-six and 19/100 (\$8,536.19) dollars; that the total expenses and charges for repairs, supplies, oil, waste, taxes, etc., for the same period were \$8,464.49; that this did not include any amount charged off for wear and depreciation of plant, which would have amounted, at any reasonable estimate, to much more than the balance between the current income and expenses, which only amounted to \$71.70.



That the total amount of income for the year last preceding November 1, 1912, was about the sum of \$8,464.43; that the total amount of expenses of running the said plant for the same period was about the amount of \$9,685.38; that the total amount of income of the said plant from November 1, 1912, about the time when the said George C. Webber took possession of the said plant, until the thirty-first day of May, 1913, was the sum of \$5,071.18; that the total amount of expense of running the same plant (not including the salary of the manager thereof) for the same period was \$5,470.62.

XIX-b. These defendants, further answering, say, on information and belief, that the said corporation, the Fenton Light & Power Company, is a close corporation owned by a few persons, and on such information and belief these defendants charge that the owners thereof are the said stockholders who entered into the several agreements hereinbefore mentioned. These defendants further say, on information and belief, that the bondholders of said company last mentioned and stockholders are, in part at least, the same parties, and these defendants have been informed and believe that the bringing of this case was provoked by certain of the stockholders above mentioned, acting as bondholders of the same company, and that they have fraudulently combined for the purpose of getting possession of the said plant and appropriating to themselves all the additions and improvements made thereto by these defendants without any payment therefor; that these defendants are informed, and believe, that the said Chester H. Bliss, shortly before the bringing of said suit, wrote a letter, over his own signature, to the Pittsburg Coal Company, advising them to collect any amount which was due to them from these defendants, for the reason that the said Bliss and his associates intended to repossess themselves of the said plant and operate the same.

XX. These defendants further say that, had not these above mentioned expenditures been made for the said plant, and had the same not been improved thereby, the said plant would

have become in such a worn-out and dilapidated condition that the goodwill of the business thereto would have been destroyed, and that it was for the interest of the bondholders of said company that the said George C. Webber and said Detroit Construction Company should have made said expenditures, and that said expenditures in the preservation of the property and the maintenance of the goodwill of said company should equitably be made a lien upon the property of the said company paramount to the lien of the said trustee in behalf of the bondholders of the said company.

XXI. These defendants, further answering, say that they are informed and believe, and so charge the truth to be that the said Chester H. Bliss is one of the bondholders of the said Fenton Light & Power Company, and that it would be inequitable for him to be permitted by this honorable court to gain any advantage by his wrong perpetrated upon these defendants in the manner hereinabove mentioned and set forth, and that the said court should ascertain in this because the amount of bonds owned by the said Chester H. Bliss and have the value thereof, upon the division of the said property, if any division thereof shall be made under the orders of this court, belonging to said Bliss applied to the payment of the claims of these defendants.

XXII. These defendants, further answering, say that they are informed that other of the said stockholders are owners of portions of the said bonds of the said Fenton Light & Power Company, and these defendants pray leave, after ascertaining the amount of bonds owned by each and every of the said stockholders, to amend this, their answer, in the nature of a cross-bill, by afterwards setting forth therein the several amounts of such bonds owned by each and every of the said stockholders.

XXIII. These defendants, further answering, say that the said plant in its condition at the time when the said George C. Webber took possession of the same, in its then condition, and with its contracts then outstanding, was not worth, as

these deponents verily believe, the amount of the indebtedness in the form of said bonds against the same; that had the said plant been in its condition represented by the said several stockholders in the said several conversations between them and the said George C. Webber and the said Oliver H. Lau, and between them and the said George C. Webber, the said plant would have been worth upwards of \$40,000, and that, therefore, the said cross-defendants, the said several stockholders, and each and every of them, by reason of their fraudulent misrepresentations, have become liable to pay to the said George C. Webber and his assigns the difference between the value of said plant at the time when said George C. Webber took possession of said plant as it then and there really was, and the value of the same as the same was represented to him, in the amount of, to wit, \$10,000.

XXIV. These defendants further say that there is a large amount of money due to the Independent Power Company from the consumers and customers of the said Fenton Light & Power Company, and that the said Independent Power Company owes the said Detroit Construction Company upon its lease and owes various persons who, by the supply of material and labor, have aided in performing the services by which such sums were earned, and that it would be inequitable to appoint a receiver to collect the amount due for such services because, as hereinbefore set forth, the whole amount paid and now due for such services since said George C. Webber took possession of said plant is less than the amount expended by the said George C. Webber and the said several defendants in behalf of the said Independent Power Company.

These defendants therefore pray:

(a) That the said Fenton Light & Power Company, a corporation, the said Joseph H. Crawford, Chester H. Bliss, Fred A. Platt and Thomas F. Stockton and Warren S. Rundell may, without oath (their answer under oath being hereby expressly waived), full, true, direct and perfect answer make to all and singular the matters hereinabove stated and charged.

(b) That the said defendants and each of them may come to a just and true account touching the amount due and owing to the said George C. Webber and the said Detroit Construction Company, Limited.

(c) That the said cross-defendants, and each of them may be decreed to pay to the said George C. Webber and the said Independent Power Company all damages which they or either of them have suffered by reason of the failure on the part of the said cross-defendants to perform their contracts entered into with the said George C. Webber in the manner hereinabove set forth, and to pay to said George C. Webber and to the Detroit Construction Company, Limited, the difference between the value of the said plant of the said Fenton Light & Power Company, as represented to the said George C. Webber, and by him to the said Detroit Construction Company, Limited, and the value of said plant as it then really was at the time when the same was taken possession of by the said George C. Webber.

(d) That the court may decree that the amount of money expended by the said George C. Webber and the said Detroit Construction Company, Limited, may be a lien upon all the property of the said Fenton Light & Power Company, and that the said lien have a priority over the lien of the complainant in this cause in behalf of the bondholders of the said company.

(e) That if the said court shall declare under the facts and circumstances existing in said cause that the said contract made and entered into between said George C. Webber and said Fenton Light & Power Company, or between the said George C. Webber and the stockholders of the said Fenton Light & Power Company is void by reason of the fraud of the said stockholders, that the said stockholders be required to pay over to the said George C. Webber and to his assigns all moneys paid by him to them, or any of them, and all moneys expended by him and the Detroit Construction Company, Limited, in behalf of the said Fenton Light & Power Company, and such reasonable damages as the said court shall

claim he and said Detroit Construction Company, Limited, have suffered by reason of the wrongdoing of the said cross-defendants and said several stockholders as hereinbefore set forth.

(f) That the court may ascertain the amount of bonds of the said Fenton Light & Power Company owned by each of the said cross-defendants and stockholders of the said company last above mentioned, and that upon a division of the assets of the said Fenton Light & Power Company, if such division shall be decreed by this court, the portion upon such division which will be paid to the said stockholders of the said Fenton Light & Power Company upon the bonds held by them may be decreed to belong to these said defendants, and may by the order of this honorable court be turned over to them as a part of the payment of the amount that shall be found due to them from the said several stockholders.

(g) That the said several stockholders be restrained by the order of this honorable court from selling, encumbering, or disposing of any bonds now owned by them in the said Fenton Light & Power Company.

(h) And that the said defendants, George C. Webber and the Detroit Construction Company, Limited, may have such other and further relief in the premises as shall be agreeable to equity and good conscience.

(i) And that the subpoena may be issued out of and under the seal of this court directed to the said cross-defendants, the said Joseph H. Crawford, Chester H. Bliss, Fred A. Platt, Thomas F. Stockton and Warren S. Rundell according to the usual practice in this court.

(j) And that the said bill of complaint may be dismissed as to these defendants.

Detroit Construction Co., Limited,

By Oliver H. Lau, Geo. C. Webber, Fred H. Aldrich, S.  
Pheney, Solicitors for Complainants and of Counsel.

The above answer and cross-bill was duly verified on  
June 7, 1913.

**Form No. 19****Answer of Railway Company Admitting Allegations of  
Complaint**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.  
IN EQUITY. No. 445

American Steel Foundries, Complainant,  
against  
The Chicago, Rock Island & Pacific Railway Company,  
Defendant

*Answer of Defendant, the Chicago, Rock Island & Pacific  
Railway Company, to the Bill of Complaint Herein*

This defendant, The Chicago, Rock Island & Pacific Railway Company, for answer to the bill of complaint herein, or to so much thereof as it is advised it is material or necessary for it to make answer unto, answering, says:

1. It admits each and every allegation of said bill of complaint.

2. Further answering said bill of complaint, this defendant, believing it to be its duty to its officers, directors and stockholders, to protect its property and business and to treat the same as a trust fund for the security of its creditors and stockholders, hereby consents to the appointment of a receiver of all of its property as prayed for in said bill of complaint for the reasons set forth therein, and further consents that such receiver may take possession of and operate all such property, collect and receive the income and tolls thereof and apply the same under the order and decree of this court.

Wherefore, having fully answered, this defendant prays to be hence dismissed.

The Chicago, Rock Island & Pacific Railway Company,  
By A. C. Ridgway, Second Vice-President.  
W. F. Dickinson, Solicitor.

**Form No. 20****Answer of Railway Company to Bill of Complaint  
(Another Form)**

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.

IN EQUITY. No. 41

Bankers Trust Co., Plaintiff,  
against

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant

*Answer of Defendant Railway Company to the Bill of  
Complaint Herein*

The defendant, The Cincinnati, Hamilton & Dayton Railway Company, for answer to the bill of complaint herein, or to so much thereof as it is advised is material or necessary for it to make answer unto, answering, says:

1. It admits each and every allegation of said bill of complaint.

2. Further answering said bill of complaint, this defendant, believing it to be its duty to its officers, directors and stockholders to protect its property and business and to treat the same as a trust fund for the security of its creditors and stockholders, hereby consents to the appointment of a receiver of all its property, as prayed for in said bill of complaint, for the reasons set forth therein, and further consents that such receiver may take possession of and operate all such properties, collect and receive the income and tolls thereof and apply the same under the order and decree of this court.

Wherefore, having fully answered, this defendant prays to be hence dismissed.

The Cincinnati, Hamilton & Dayton Railway Company,

By Morison R. Waite, General Solicitor, 97 Carew  
Building, Cincinnati, Ohio.

Waite & Schindle, Attorneys.

July 2, 1914.

**Form No. 21****Answer of Trustee of Mortgage to Complaint Against  
Railway**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.  
IN EQUITY. No. 41. CONSOLIDATED

Bankers Trust Company, Plaintiff,  
against  
The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant

*Answer of Bankers Trust Company to the Bill of Complaint  
Herein of United States Mortgage & Trust Company,  
as Trustee under the First Mortgage of the Cin-  
cinnati, Dayton & Ironton Railroad Company*

*To the Honorable the Judges of the District Court of the  
United States for the Southern District of Ohio, West-  
ern Division:*

Bankers Trust Company, plaintiff in the above entitled consolidated cause No. 41, and defendant in cause No. 105, answers the bill of complaint of United States Mortgage & Trust Company, as trustee as aforesaid, in said cause No. 105, as follows:

1. It admits the allegations contained in paragraphs first, second, third and fourth of said bill of complaint.

II. It has no knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in paragraphs fifth, sixth, seventh, eighth, ninth and tenth of said bill of complaint, and leaves the complainant, United States Mortgage & Trust Company, the proof thereof upon the trial.

III. It admits the allegation contained in paragraph eleventh of said bill of complaint as to the formation of the defendant Railway Company, but it has no knowledge or information



sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph eleventh.

IV. It admits the allegations contained in paragraph twelfth of said bill of complaint to the effect that since the execution and delivery of the alleged first mortgage therein mentioned and described The Cincinnati, Dayton & Ironton Railroad Company and defendant Railway Company have from time to time acquired certain other property than that described in said alleged first mortgage, but it has no knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in said paragraph twelfth.

V. It admits the allegations contained in paragraph thirteenth of said bill of complaint.

VI. It has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph fourteenth, fifteenth and sixteenth of said bill of complaint.

VII. It admits the allegations contained in paragraph seventeenth of said bill of complaint.

VIII. It admits the allegation contained in paragraph eighteenth of said bill of complaint to the effect that the defendants claim an interest or lien on the railroad, property and franchises described in said alleged first mortgage, and as to the interest or lien claimed by this defendant on said railroad, property and franchises, it prays leave to refer to its amended and supplemental bill of complaint against the defendant Railway Company, filed in this court June 29, 1916, in cause No. 41, in equity, as fully as if the same were herein set forth at length.

IX. It has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph nineteenth of said bill of complaint.

Wherefore, this defendant, having fully answered said bill of complaint, submits the rights to this honorable court and prays that in the event that this court shall find any matters in said bill to entertain, any decree which may be

made herein take a just and true account of the matters aforesaid, as justice and equity may require.

Dated September 5, 1916.

[SEAL] BANKERS TRUST COMPANY,  
By Wm. Otway, Vice-President,

Attest: H. R. Wilson, Assistant Secretary.

Maxwell & Ramsey, Union Central Building, 1 West  
Fourth Street, Cincinnati, O.,

White & Case, 14 Wall Street, New York, N. Y.,

Solicitors for Defendant, Bankers Trust Company.

Lawrence Maxwell, Union Central Building, 1 West Fourth  
Street, Cincinnati, O.,

Roberts Waller, 14 Wall Street, New York, N. Y., of Counsel.

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## Form No. 22

### Answer of Traction Company Joining in Prayer for Receiver

(Form under Civil Code Procedure)

John C. Hooven, Plaintiff,

v.

The Cincinnati, Lawrenceburg & Aurora Electric Street Railway Company and Union Savings Bank & Trust Company,  
a Corporation, as Trustee of the Bondholders of said  
Company, Defendant

*Answer of the Defendant the Cincinnati, Lawrenceburg & Aurora Street Railway Company:*

Now comes the defendant, the Cincinnati, Lawrenceburg & Aurora Electric Street Railway Company and hereby enters its appearance in the above cause and for answer to the plaintiffs petition says that it admits that all the allegations

contained in said petition are true and joins in the prayer of said petition that a receiver be appointed as receiver of its said railroad.

———, Attorney for Defendant, the Cincinnati,  
Lawrenceburg & Aurora Electric Street  
Railway Company.

State of Ohio, Hamilton County, ss. .

———, being first duly sworn says that he is ——— of the defendant, the Cincinnati, Lawrenceburg & Aurora Electric Street Railway Company, and that he is duly authorized in the premises and that the facts stated and allegations contained in the foregoing answer are true.

———.   
Sworn to and subscribed before me this ——— day of  
———, 19—.

———, Notary Public in and for Hamilton  
County, Ohio.

NOTE.—Copy of answer in *Hooven v. C. L. & A. Traction Co.*, Case No. 6623, Insolvency Court of Hamilton County, Ohio.

## Form No. 23

STATE OF MICHIGAN, THE CIRCUIT COURT FOR THE COUNTY OF  
KALAMAZOO. IN CHANCERY

At a session of said court, held at the courthouse in the City of Kalamazoo in said county, on September 27 A. D., 1910.

Present Hon. Frank E. Knappen, Circuit Judge.

In this cause there has this day been filed the bill of complaint duly verified by said complainant, praying, for reasons therein set forth, for a decree dissolving the copartnership heretofore existing between the said complainant and said defendants under the firm name of George Rickman Sons Company; also for an accounting and the appointment of a temporary receiver of all the assets and property of said copartnership, pending the hearing and determination of this suit.

Upon the filing of said bill, there appeared before the court the complainant, by his solicitor, T. J. Cavanaugh. The defendants appeared and filed their written consent to the appointment of a temporary receiver and to the entry of this order. And it appearing to the court, that the appointment of a temporary receiver of all the assets and property of said copartnership firm is for the best interests of all concerned, therefore, on motion of T. J. Cavanaugh, solicitor for complainant, it is ordered as follows:

1. That the Michigan Trust Company, a Michigan corporation, having its principal business office at the City of Grand Rapids, Michigan, and being authorized by law to act as such,

be and is hereby appointed temporary receiver of all and singular the assets and property of said copartnership firm, with full power and authority to take possession of each, every and all thereof, to conserve and control the same, to manage and conduct the business heretofore carried on by said copartnership, to collect and receive the moneys due and owing to said copartnership or to said receiver, and out of said receipts to pay the expenses of prosecuting said business, of maintaining and conserving the properties of said firm and such dividends to the creditors of said copartnership as the court from time to time shall direct, and such receiver shall have authority to buy such material as may be necessary in the usual course of trade to carry out the purposes of its appointment, and said receiver shall also have all the usual powers of a receiver appointed by a court of chancery in partnership cases.

2. \* \* \*

3. It also appearing to the court that the copartnership as part of its assets, has certain uncompleted contracts for public and private buildings, which it is for the interest of all concerned to complete and finish.

It is further ordered, that the receiver be and is authorized and empowered to enter upon the completion of said contracts and for that purpose to use any and all money or funds coming into its hands from the copartnership, or from said contracts, to that end until the filing of the report required by this order, and the further order and direction of this court, and in the meantime, to borrow upon the faith of the property of said copartnership temporarily of such sums of money as it may find to be absolutely necessary for said purpose.

4. All moneys borrowed by said receiver pursuant to this order shall be evidenced and secured by receiver's certificates approved by this court as to the form thereof.

5. The receiver shall proceed to make an accurate inventory of the assets and effects of said copartnership and notify

the creditors so far as it shall be able to ascertain same of the pendency of this suit and its appointment to said receivership. The receiver shall also examine into the condition of all of said contracts, and within thirty (30) days after the entry of this order file with this court the said inventory, a list of the creditors of said copartnership and the amount of their demand, as claimed by them respectively, so far as same can be ascertained by it, and also a full report showing the situation and condition of the copartnership assets, the business carried on by it, the said contracts, and make such recommendations to the court concerning same and the future conduct, management and disposition of same, as it shall deem or be advised is necessary and proper to give the court and all concerned detailed information of the assets and condition of said copartnership and its property and assets, to the end that the court may then make such further or other order in the premises as it may deem to be necessary or expedient.

6. The appointment of said receiver shall take effect on the filing of an acceptance, in writing, of the said Michigan Trust Company, containing an undertaking on its part for the faithful discharge of the duties of its appointment and for the accounting of all moneys and effects received by it, as such receiver, and such appointment shall continue until the entry of the final decree in this cause, or until the further order of this court in the premises.

7. The written consent of the said defendants to the appointment of said receiver and the entry of this order shall be filed with the register of this court.

8. The parties to this cause, or any other party or parties in interest, are given leave to apply to the court at any time for any other or further grant of power to the said receiver or for such other order respecting the conduct of said receivership as circumstances may render advisable or necessary.

Frank E. Knappen, Circuit Judge.

## Order Appointing Permanent Receiver of Partnership (Michigan Form)

Arthur W. Rickman, Complainant,  
against

At a session of said court held at the courthouse in the City of Kalamazoo in said county on January 28 A. D., 1911.

This cause came on to be heard on the pleadings and on proofs taken in open court, Thomas J. Cavanaugh, appearing for the complainant, and George V. Wiener appearing for the defendants, and the same was argued and submitted.

1. Said Arthur W. Rickman, Alfred G. Rickman and Peter L. Rickman and William D. Rickman, are and for several years last past have been copartners in business under the name of George W. Rickman Sons' Company. Said firm was engaged in the business of building contracts and in the management of a hotel at Kalamazoo, Michigan, known as the Hotel Rickman. There were and are no formal written articles of copartnership between the members of said firm. Said copartnership was not agreed to be continued for any definite time, but was and is terminable at any time at the will of either of said copartners, and as a result of the filing of the bill of complaint and the rendition of a decree in this cause, said copartnership is now dissolved.

2. The interests of said copartners were equal, each having an undivided one-fourth interest in said firm and its assets. Inasmuch as it is necessary in the first instance to pay the firm creditors before any sum remains for division between

the copartners, or for payment to either of them, the court does not at this time fix nor determine the equities of the copartners between themselves in the assets of said copartnership, but either of said copartners shall be at liberty to apply to this court hereafter to determine the equities and rights of said copartners as between themselves in any surplus that shall remain for distribution among them.

3. From the proofs, it appears that the indebtedness of said firm is now in excess of two hundred thousand dollars (\$200,000) and that it is desirable in the interests of creditors to make a sale of the assets of said firm and to liquidate said assets for the purpose of paying the indebtedness of said firm or such dividends thereon as it may be possible to pay after satisfying the expenses of the receivership and of the management and conservation of the firm assets and business.

4. The Michigan Trust Company, a corporation of Grand Rapids, Michigan, is hereby appointed receiver of all and singular the assets and properties of said firm, with full power to take possession thereof and conserve and control the same, to manage and conduct the business heretofore carried on by said George W. Rickman Sons' Company, to manage and conduct the operation and to continue the business of the hotel known as the Hotel Rickman and to make such agreements and incur such expense as shall be necessary for the management, control and operation of said property, to collect and receive the moneys due or owing to said firm, or to said receiver, or to the temporary receiver heretofore appointed, and out of the said receipts to pay expenses of prosecuting the business and management of the several properties of said firm, and such dividends to creditors as the court from time to time may direct, and said receiver shall also have all the usual powers of a receiver appointed by a court of chancery in partnership cases.

5. This appointment is made in succession to the appointment of a temporary receiver contained in the order of this court, made on September 27, 1910, and the receiver hereby



appointed shall succeed to all and singular the rights heretofore possessed by said temporary receiver, and shall take and be vested with the title to the choses in action, which have heretofore accrued to said temporary receiver in the conduct of the business carried on by it, with power to confirm and ratify such agreements with reference to the management and control of said assets and property as shall have been entered into by said temporary receiver and to carry out and perform said agreements. The appointment hereby made shall take effect on the filing of an acceptance, in writing, by the Michigan Trust Company, aforesaid, containing an undertaking on its part for the faithful discharge of the duties of its appointment, and to account for all moneys and effects received by it as such receiver, and such appointment shall continue until the further order or decree of this court.

6. The creditors of said firm of George W. Rickman Sons' Company are hereby required to exhibit their demands on this cause by filing proofs of their respective claims in the office of the register of the Circuit Court for the County of Kalamazoo, in chancery, at Kalamazoo, Michigan. Said receiver shall within ten (10) days from this date, give notice thereof by mail to each creditor of said firm known to said receiver, and within ninety (90) days thereafter, shall make and file with the court, proof of service of said notice. The notices served shall require all creditors to prove their debts and claims within ninety (90) days from the date hereof by a proof of claim to be filed in said register's office, or in default thereof, the receiver will proceed to distribute said estate as soon as practicable thereafter, without reference to claims not proved when dividends are paid. Notice requiring the creditors of said firm to exhibit their demands by filing proofs thereof in said register's office within the period aforesaid, shall also be given by said receiver by publishing such notice once a week for six (6) successive weeks in the Kalamazoo Evening Telegraph, a newspaper printed, published and circulated in the said County of Kalamazoo.

7. A list of said creditors (so far as known to said receiver), shall be filed by it, with proof of service of the notice given by mail as aforesaid. Every proof of claim filed as aforesaid shall be itemized as sworn to and shall state the actual amount unpaid and owing, the actual consideration thereof, when the same was contracted and when the same has become or will become due, whether any, and what securities are held therefor, whether any, and what payments have been made thereon, that the sum claimed is justly due from said George W. Rickman Sons' Company to the claimants and that the claimant has not, nor has any other person for his use, received any security or satisfaction whatever other than by him set forth.

8. The receiver, or either of the parties to this cause, may contest any claim filed as aforesaid. Every creditor desirous of having a claim filed by any other creditor, contested, may, by writing, request the receiver to contest such claim, whereupon it shall be the duty of said receiver to investigate, and if in its opinion it is deemed best so to do, such contest may be made in such manner as shall be hereafter determined by the court.

9. The receiver is directed to cause an inventory of the property coming to its hands as such receiver to be made within ten (10) days after it assumes its trust, together with an appraisement thereof by two disinterested appraisers to be chosen by it.

10. The parties to this cause, said receiver, or any other party in interest, is hereby given leave to apply to the court at any time for any other or further grant of power to the receiver hereby appointed, or for such other or further order respecting the conduct of said receivership or the properties embraced therein as circumstances may render advisable.

Frank E. Knappen, Circuit Judge.

Edward F. Curtenius, Register.

**Form No. 25****Order Appointing Receiver of Law Partnership**

COURT OF COMMON PLEAS, HAMILTON COUNTY, OHIO

No. 89111. DECREE \*

Nathan E. Jordan, Plaintiff,  
against  
Joseph W. O'Hara, Defendant.

This day this cause came on to be heard and by consent of all parties the court finds as follows:

That the firm of Jordan, Jordan & Williams was composed of J. A. Jordan, I. M. Jordan and N. E. Jordan and William G. Williams, and that on or about June 1, 1885, William G. Williams retired from said firm, and that thereafter said J. A. Jordan, I. M. Jordan and N. E. Jordan continued the business as partners, under the firm name of Jordan & Jordan until August 12, 1890, when Joseph W. O'Hara was admitted into said firm and the business was conducted thereafter under the name of Jordan, Jordan and O'Hara.

That said Joseph W. O'Hara was to and did receive a salary from said firm, but had no other financial interest in the business thereof. That Jackson A. Jordan died on or about October 7, 1890; and that Isaac M. Jordan died on December 3, 1890; leaving said Nathan E. Jordan sole surviving partner of said firm.

That Nathan E. Jordan, Agnes G. Jordan, executrix of Jackson A. Jordan, deceased, and Elizabeth P. Jordan,

\* This decree and order appointing a receiver was predicated upon and entered after motion for a receiver was made in a case as follows:

One partner of a law firm died; one of the surviving partners brings suit against a second surviving nominal partner. Plaintiff prays that the defendant be ordered to deliver up books, papers and property of every kind belonging to the firm or firms, be enjoined from representing himself as a surviving partner, from soliciting the clients of said firm or firms, whether pending or new, and that the court may settle and determine and establish the plaintiff's right as the only surviving member of said firm or firms; that upon final hearing such restraining order may be made perpetual, and for all other and proper relief. Case being No. 89,111, Court of Common Pleas, Hamilton County, Ohio. Nathan E. Jordan, plaintiff, v. Joseph W. O'Hara, defendant.

administratrix of the estate of Isaac M. Jordan, deceased, are entitled to share equally in all monies owing to said firm or either of them for professional services rendered prior to the decease of Isaac M. Jordan and then unpaid, after the payment of the debts of said firms or either of them, except as may be otherwise provided by written agreement dated December 29, 1891, signed by all the parties hereto.

It is further ordered that Hiram D. Peck, Esq., be and he hereby is, appointed receiver herein, upon giving bond with good security in the sum of \$15,000; to collect by suit or otherwise, all monies now due and owing said firms of Jordan, Jordan & Williams, Jordan & Jordans, Jordan, Jordans & O'Hara, and each of them for professional services and for that purpose to take charge of books and papers of said firms or either of them without inconvenience to the parties; and of his proceedings as such, said receiver is ordered to make proper report to this court.

It is further ordered that out of the money to be collected as such receiver, he pay first the costs herein taxed at (\$——) and it is hereby ordered that the said Joseph W. O'Hara be, and he hereby is, dismissed from this action.

**Form No. 26****Order Appointing Receiver of Traction Company**

(Form under Civil Code Procedure)

The Cincinnati & Columbus Traction Company, Plaintiff,  
against  
The Union Savings Bank & Trust Company, Defendant.

*Order Appointing Receiver \**

This cause coming on to be heard upon the petition and motion of the plaintiff herein for the appointment of a receiver and it appearing to the court that the allegations of the petition are true and that the said plaintiff was, and is operating an electric interurban railway between the cities of Norwood in the County of Hamilton, State of Ohio and Hillsborough in Highland County, State of Ohio, and is a common carrier of merchandise, mails, express matter and passengers, and that it is unable to meet its obligations which have matured, and which are about to mature and that said company is insolvent, that the property of said company is encumbered by two (2) mortgages as set out in the petition; that under the trust of said mortgages, the first of said mortgages, the coupon notes secured thereby will mature July 1, 1913, and that of the second mortgage there have been issued and are outstanding, about one hundred and forty-eight thousand (\$148,000) dollars of the coupon notes secured thereby, all of which said second mortgage notes have been in default for interest for nearly eighteen (18) months, and that there are judgments against said company upon one of which amounting to eight thousand (\$8,000) dollars execution is about to be issued, said judgment having become final and that the issuing of said execution and the taking thereunder of the personal property of said plaintiff will lead to the disintegration of its road and property and to the impossibility

\* Copy of order appointing receiver in The C. & C. T. Co. v. The Union Savings Bank & Trust Co., Case No. 153,225, Court of Common Pleas, Hamilton County, Ohio.

of its conducting operations or paying debts, to the very great loss of said corporation and its creditors and to a waste of its assets. Whereas, if the railway of said Traction Company can be held together and preserved from disintegration, and if the management of the property can be continued as a going concern valuable results will accrue to all creditors and stockholders of said company and that it is essential to the public interests to keep said property intact and operate the same as a common carrier.

And the court further finds that by reason of recent floods, the property of said plaintiff has been greatly damaged and cut into by the destruction of one of its principal bridges so that a considerable portion of said road can not be operated at all.

The court further finds that the plaintiff company has no money or means of raising money to pay any of said obligations, or to put said road in order for operation, and that there is an exigency for the immediate appointment of a receiver.

Wherefore the court grants said motion and by the consent of parties hereto, appoints the Union Savings Bank & Trust Company of Cincinnati, Ohio, receiver herein and directs and empowers said receiver to take possession of all of the property of said plaintiff and all of its books, papers and office fixtures, and all of the property designated in the petition and covered by said mortgages and the said plaintiff is directed to turn over to said receiver all of the property of said company including its books and papers.

It is further ordered that said receiver by one of its officers, appear in open court and accept said appointment and perform such other acts as the court may direct that are preliminary to the qualification of said receiver and thereupon said receiver is empowered and directed to take possession of the property of said Railway Company and its books and papers and to operate the said railway company as a

going concern and to employ necessary help and to make such repairs as may be necessary and as may be ordered and provided for by this court, and to receive all the income thereof and to pay the operating expenses.

And furthermore, said receiver is authorized and directed to sue for and collect in its own name as receiver, all the assets and credits of said plaintiff company and is directed to pay as soon as necessary funds can be provided for out of the earnings of said railroad or otherwise, all current operating expenses of the said company that have become due during the past six months prior to the filing of this petition and to make monthly reports of said company and its income and expenditure and such other reports as this court may require from time to time.

And the court reserves the power to make such orders from time to time as may be necessary in the premises and the said the Union Savings Bank & Trust Company appearing in open court by C. B. Wright, its president, accepted said appointment as receiver and was sworn on behalf of said corporation.

And the court fixes the bond of said receiver at twenty-five thousand (\$25,000) dollars.

**Form No. 27****Order Appointing Receiver of Traction Company  
(Another Form)**

(Form under Civil Code Procedure)

John C. Hooven, Plaintiff,  
against

The Cincinnati, Lawrenceburg & Aurora Electric Street Railroad Company and Union Savings Bank & Trust Company, a Corporation, as Trustee of the Bondholders of said Company, Defendant.

*Entry Appointing Receiver \**

This cause coming on to be heard upon the application of the plaintiff for the appointment of a receiver herein, and by consent of parties hereto, it is ordered that ——— be and he is hereby appointed receiver of all the assets of the defendants, the Cincinnati, Lawrenceburg & Aurora Electric Street Railway Company, including the franchises, property, monies, accounts, choses in action and all other property of every description whatsoever, and wherever the same may be located, and he is ordered and directed and empowered to take charge of and hold the same subject to the orders of this court.

He is further directed and empowered to continue the operation and management of said railroad and to take all necessary steps to that end, with full power to employ and discharge any and all necessary help, to receive all the income thereof, and pay the operating expenses including taxes and to make the necessary contracts and expenditures for repairs and for the rehabilitation of said road to the end that the whole mileage shall be put in operation at as early a date as possible.

And furthermore, said receiver is authorized and directed to sue for and collect in his own name as receiver all the assets and credits of said company and is directed to pay as soon as necessary funds can be provided, out of the earnings of said

\* Copy of order appointing receiver in *Hooven v. C. L. & A. Co.*, Case No. 6,623, Court of Insolvency, Hamilton County, Ohio.



railroad or otherwise, all current operating expenses of the said company that have become due during the past six months prior to the filing of this petition and to make monthly reports of the operating of said company and its income and expenditures and such other reports as this court may require from time to time.

And it appearing to the court that the company is now indebted to the State of Ohio in the sum of about two thousand (\$2,000) dollars for taxes now due upon the property and that a pay roll amounting to about two thousand (\$2,000) dollars will become due and payable upon the twenty-fifth day of this month and further that the company is indebted to various persons for material furnished and labor performed necessary in the operation of the railroad during the six months next preceding this entry amounting to the sum of about five thousand (\$5,000) dollars, it is now ordered that said receiver issue his certificates in the sum of ten thousand (\$10,000) dollars payable six months after date, drawing interest at the rate of six (6%) per cent. and to sell the same at not less than par, out of the proceeds thereof, he shall pay said payroll, taxes and bills herein referred to. Said receiver's certificates shall constitute a first and best lien upon all the assets and property of the said company subject to all other liens thereon.

And it is further ordered that the bond of said receiver be fixed, in the sum of twenty-five thousand (\$25,000) dollars and thereupon came the aforesaid ——— and in open court accepted said appointment and an oath was administered to him for the faithful performance of his duties by the court and the said receiver thereupon tendered his bond with ——— company as security which was examined and approved by the court and ordered filed herein.

**Form No. 28****Order Appointing Receiver of Hotel Company**

IN CHANCERY OF NEW JERSEY

Between August H. Generotzky et al., Complainants,  
and  
Barnay Hotel Company, a Corporation of the State of New  
Jersey, Defendants.

*On Bill. Order*

Upon opening the matter this day to the court by Wootton, Harcourt & Steelman of counsel with the complainants and due proof being made of the service of the order to show cause heretofore granted herein and it appearing to the court that the said defendant has suspended its ordinary business and are insolvent: It is on this day, September 13 A. D., 1915, ordered that the said order to show cause be made absolute and that John Gossler, of Atlantic City, New Jersey, be made and he is hereby appointed receiver, with full power to demand, sue for, collect and receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenement, books, papers, choses in action, bills, notes and property of any and every description belonging to the said Barnay Hotel Company at the time of their suspension of business, and to sell, convey or assign all the said real or personal estate and to pay into the said Court of Chancery all the moneys and securities for money arising from such sales. And do and perform all the duties imposed upon him and required by law and especially by an Act entitled, "An Act concerning Corporations," approved April 7, 1875. And it is further ordered that said John Gossler, before entering upon his duties, take the oath prescribed by law and give bond to the Chancellor of the State of New Jersey, in the sum of \$10,000, conditioned for the faithful performance of his duties, to be approved as to the form and security thereof by Wm. M. Clevenger, one of the Special Masters of this court.

Respectfully advised, E. R. Walker, C., E. B. Leaming, V. C.

**Form No. 29****Order Appointing Receiver of Irrigating Company**

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL  
CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA

Atlantic Trust Company, Plaintiff,  
against  
Woodbridge Canal and Irrigation Company, Defendant.

*Order Appointing Receiver*

The bill of complaint having been filed in this action for the foreclosure of a mortgage upon the canals and other properties of the Woodbridge Canal and Irrigation Company by the plaintiff as trustee for the bondholders of said canal company, which complaint is duly verified; and it appearing to said court therefrom that a case for the appointment of a receiver exists in this action, and holders of a large amount in value of the bonds secured by said mortgage having requested the appointment of E. C. Chapman to such receiver, and the defendant Woodbridge Canal and Irrigation Company being present by its counsel and consenting to this order; and it further appearing that said E. C. Chapman is in all respects a suitable and competent person to be appointed such receiver,

Now, on motion of counsel for said plaintiff, it is ordered that E. C. Chapman, of the City and County of San Francisco, be and he is hereby appointed the receiver of all and singular the property, canals and franchises of the defendant, the Woodbridge Canal and Irrigation Company, including all the property mentioned and described in the complaint in this action, with all the records, books, papers and accounts of said defendant corporation, in anywise appertaining to the business thereof.

The said receiver, before entering upon his duties, shall be sworn to perform them faithfully, and shall also execute and file with the clerk of this court an undertaking with one or more sufficient sureties to be approved by the court, in the

sum of \$10,000, to the effect that he will faithfully discharge the duties of receiver in this action, and will obey the orders of the court therein. On said bond being filed and approved by this court or a judge thereof, and said oath being taken and filed, said receiver shall forthwith enter upon the performance of his duties. It is further ordered:

1. As soon as may be after he shall have entered upon the performance of his duties, the said receiver shall make and file with the clerk of this court a true, full and complete inventory of all and singular the property of the said Woodbridge Canal and Irrigation Company, real, personal and mixed, of which he is hereby appointed a receiver, and of which he shall have taken possession.

2. Said receiver shall continue the operation of the main and branch canals of the said Woodbridge Canal and Irrigation Company in the usual and ordinary course as the same is now operated, discharging contracts for water supplies entered into by said company so far as practicable; collecting the rents and tolls of said canals, and the moneys payable under water contracts, and keeping the premises and property, both real and personal, in good condition and repair. To the same end, he shall, from time to time, employ and discharge all needful assistants, servants, agents and employees, at such salaries and compensation as he may deem reasonable, and pay for all such needful labor and supplies and materials as may seem to him to be necessary and proper in the exercise of his sound discretion, for carrying on and keeping in repair said canals, with leave to apply to the court from time to time as he may be advised for instructions in the premises. He shall have the power to commence and prosecute any suits or actions he may deem it proper to commence hereafter, either in the name of the company or in his own name as receiver, as he may be advised, and to be substituted in place of said Woodbridge Canal and Irrigation Company in any suits now pending, which may affect the property whereof he is receiver. He shall do whatever may be needful to preserve and maintain

the corporate franchises of said defendant corporation and its rights to the use of the water and all its property, until final judgment in this action, and to defray the necessary and proper expenses incident thereto.

3. The said receiver shall keep a full, true and particular account of all his acts and doings as such receiver, of all the property, rents, revenues and income, and of all his payments and disbursements in the performance of the duties imposed by this order; and he shall file such account from time to time as this court may direct. He shall keep all balance of moneys in his hands on deposit in some bank or banks of approved credit, subject to his order, and he shall not pay out but shall keep, subject to the further order of this court, all such moneys, except in so far as payments and disbursements are authorized by the terms of this order.

The said defendant the Woodbridge Canal and Irrigation Company, and each and all of the officers and agents of said company, are directly commanded and enjoined to deliver up and surrender to said receiver, when he shall have become qualified according to the terms of this order to enter upon his duties, all and singular the premises and property whereof he is so appointed receiver.

Done in open court, this October 3, 1894.

W. B. Gilbert, Judge.

**Form No. 30****Supplemental Order of Final Appointment of Receiver of  
Irrigating Company**

And now upon this October 3 A. D., 1894, Edgar C. Chapman, the receiver heretofore appointed herein, having filed herein his bond in the sum of ten thousand (\$10,000) dollars, with Benjamin G. Lathrop, Jr., and Edgerton F. Card, as sureties, in accordance with the decree entered herein, dated October 3, 1894; and the said bond having been approved by the court,

It is therefore ordered and decreed by the court, that said receiver be and he is hereby invested with all the powers and authority, and charged with all the duties in said decree mentioned, and he is hereby authorized and directed to immediately enter upon the discharge of his duties as aforesaid and to take immediate possession of all and singular the property, rights, and franchises in said decree mentioned.

Dated October 3, 1894.

W. B. Gilbert, Judge.

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**Form No. 31****Order Appointing Receiver of Manufacturing Company**

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE  
DISTRICT OF DELAWARE. NO. 260. IN EQUITY

Henry A. Hitner and Joseph G. Hitner, Trading as Henry  
A. Hitner's Sons, Plaintiffs,  
against

The Diamond State Steel Company, Defendant.

*Decree Appointing Receivers*

And now, to wit, this December 12 A. D., 1904, this cause having come on to be heard at this term on bill and answer, and the affidavits filed in support of the motion for the

appointment of receivers, and after hearing counsel for the parties, and upon consideration thereof, it is, on motion of Christopher L. Ward, Esq., solicitor for complainant, ordered, adjudged and decreed by the court as follows:

1. That the complainant, Henry A. Hitner and Joseph G. Hitner, trading as Henry A. Hitner's Sons, are creditors of the defendant, the Diamond State Steel Company, in the sum of \$15,068.03, and that the said defendant was at the time of filing the bill of complaint in this cause, and now is, insolvent.

2. That James P. Winchester and Howard T. Wallace, of Wilmington, Delaware, be and they are hereby appointed receivers of this court, with the usual powers of receivers in like cases, of all the property, real and personal, equitable interests, things in action, effects, moneys, receipts and earnings, rights, privileges, franchises, accounts and immunities of the said company, and over all other property thereof of every kind and description wheresoever situated within the jurisdiction of this court.

3. The said receivers are hereby authorized and directed to take charge of the estate, effects, business and affairs of said defendant corporation, and to collect the outstanding debts, claims and property due and belonging to the said company, with power to prosecute and defend in the name of the said corporation, or otherwise, all claims or suits, until the same can be brought by proper petition, motion or order to the attention of this court, and to appoint an agent or agents under them, and subject to the approval of the court to do all other acts which might be done by such corporation and may be necessary and proper; and subject to like approval to do whatever may be needful and proper to maintain and preserve the corporation, organization and franchises of the company within the jurisdiction of this court until the further order of this court.

4. That said receivers in the first instance shall have full power to employ and discharge and to fix the compensation of such officers, agents and employees as may be necessary to aid

them in the discharge of their duties, and that out of the moneys which shall come into the hands of said receivers they shall pay all the current expenses incident to the administration of said receivership and the prosecution and defense of all suits hereinbefore authorized.

5. That said receivers are hereby directed to deposit all moneys coming into their hands in some national bank in the City of Wilmington, located within the jurisdiction of this court, and to report to the court what national bank they have selected.

6. That said receivers within five days from the date of this order execute a joint and several bond, with surety to be approved by this court, and to be filed with the clerk thereof, in the sum of \$200,000, conditioned for the faithful discharge of their duties in the premises, and to account for all funds coming into their hands within the jurisdiction of this court, according to the order of this court.

7. That said receivers are hereby directed and required to keep proper books of account wherein shall be stated the earnings, expenses, receipts and disbursements of the said trust under this order of their appointment, and preserve vouchers for all payments made on account by them thereon, and to file in the office of the clerk of this court within three months from the date of their qualification an inventory of all property of every description which shall have come into their possession, together with an account of their receipts and expenditures as such receivers, including a list of debts and credits which may be due from and to the estate in their charge, and thereafter make and file quarterly returns of their receipts and disbursements during their continuance in office, or as this court may by further order direct.

8. And it is further ordered that any party interested in the premises may apply to this court for further directions with respect to the property and estate in this order referred to.

9. That the authority of the said receivers hereby appointed shall continue until otherwise ordered by the court.

(Signed) Edward G. Bradford, J.



**Form No. 32****Decree of Equitable Relief and Appointment of Receiver  
of Manufacturing Company**

(Entered by Judge Hollister, December 18, 1913)

This cause came on to be heard at this term, and was argued by counsel, and thereupon, on consideration thereof, it was ordered, adjudged and decreed that the plaintiff be, and she is hereby, entitled to the following relief, to wit:

1. That the deed of assignment, dated October 31, 1913, from the Superior Portland Cement Company, by Eugene Zimmerman, its vice-president, and George P. Daniels, its secretary, to the defendant, Justus Collins, and by him filed in the Insolvency Court of Hamilton County, Ohio, and recorded in the recorder's office of Lawrence County and Scioto County, was not and is not the lawful or valid deed of said company and the same is hereby declared to be null and void and is set aside and the same is hereby ordered cancelled by said defendant, Justus Collins, and the defendant, Eugene Zimmerman; and the defendant, Justus Collins, is ordered forthwith to execute a deed in due form of law, reconveying to the defendant, the Superior Portland Cement Company, all of the property and assets mentioned in, or covered by, said invalid deed of assignment.

2. That the defendant, Justus Collins, be permanently enjoined from acting as assignee under said invalid deed of assignment, and that the defendant, the Superior Portland Cement Company, its officers, agents, attorneys and employees are enjoined from recognizing said Justus Collins as assignee, or permitting him to act further thereunder.

3. That the defendant, Justus Collins, file in this court a complete account of his doing under said invalid deed of assignment, including all moneys received and disbursed and all obligations incurred by him.

4. That the defendants, Justus Collins and Eugene Zimmerman, each be assessed and ordered to pay the costs of this

proceeding, including the payment of \$—— to Miss Antoinette Jackson for services in taking testimony in this case.

5. That Guy W. Mallon be, and he is, hereby appointed receiver of all and singular the assets of the defendant, the Superior Portland Cement Company, to operate the business of said company and to preserve its assets until the further order of this court; and that upon the receiver giving bond in the sum of \$10,000 and qualifying as receiver, the defendants, Justus Collins and the Superior Portland Cement Company, its officers, agents, attorneys and employees shall turn over to said receiver all and singular the assets of the company, including its books of account, stock and minute books, and all persons whatsoever are enjoined from interfering with the possession and custody of said receiver of said assets.

To all the foregoing, the defendants, Justus Collins, Eugene Zimmerman, and the Superior Portland Cement Company, each except and give notice of appeal, and the bond therefor is hereby fixed at \$1,000.

All questions of further costs, expenses, damages and attorneys' fees are continued for further consideration and order.

To all of which each of the defendants by this counsel, except.

**Form No. 33****Order Appointing Receiver of Railway Company**

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN  
DIVISION. No. 41. IN EQUITY

Bankers Trust Company, Plaintiff,  
against

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

This cause came on to be heard this day upon the bill of complaint filed herein and the answer thereto, as to the appointment of a receiver as prayed for in said bill of complaint and in said answer, and hearing Lawrence Maxwell, Esq., and Charles J. Fay, Esq., of counsel for the plaintiff and Morison R. Waite, Esq., of counsel for the defendant, and after due deliberation, it is:

Ordered, adjudged and decreed, that Judson Harmon and Rufus B. Smith of the City of Cincinnati in the State of Ohio, be and they are hereby appointed receivers of said the Cincinnati, Hamilton & Dayton Railway Company, and of all the railroads and other property and assets, real, personal or mixed, of whatever kind or description and wheresoever situated, owned by said railway company, including all tracks, terminal facilities, warehouses, offices, stations, shops, and all buildings and appurtenances of every kind, and all locomotives, cars and other rolling stock and equipment, and all tools, machinery, furniture, fixtures, coal, materials and supplies and all books of account, records and other books, papers and accounts, cash in banks on deposit and in hand, money debts, things in action, credits, stocks, bonds, securities (other than such as are pledged with and held by the plaintiff, as trustee under the mortgage set forth in the bill of complaint herein), deeds and leases, contracts, muniments of title, bills receivable, rents, issue profits and income accruing and to accrue, as well as all leasehold interests and operating and other contracts,

and all rights, interests, easements, privileges and franchises of said railway company, and all other assets of every kind; that said receivers are hereby authorized immediately to take possession of the same and to run, manage and operate the said railroads and property wherever situated or found, whether in this state and district, or elsewhere, including such railroads and property as said railway company holds, controls or operates under lease or otherwise, in their discretion and in such manner as will in their judgment produce the most satisfactory results and to exercise the authority and franchises of said railway company and to discharge its public duties and to preserve and protect said property in proper condition and repair, so that it may be safely and advantageously used, and to protect the title and possession and secure and develop the business of the same and in their discretion to employ and discharge and fix the compensation of all such officers, attorneys, managers, superintendents, agents and employees, and to make such payments and disbursements, as may be needful and proper in so doing; that said receivers be and they are hereby authorized to collect the rents, income, tolls and profits of said railroad and property and to make appropriate payments therefrom on account of accrued rents and other necessary trackage and other charges, and to redeem any and all other securities of said railway company now pledged as security on loans of money, and to borrow all money if needful in their judgment, in order to comply with this direction, and to pay for current necessities for labor and supplies, but for no other purpose without the order of this court.

It is further ordered that said receivers be and they are hereby authorized and directed in their discretion to keep the railroads and other property of said railway company and its auxiliary companies employed and used in the manner in which they have been heretofore been used and employed, so far as said receivers shall deem it to be for the best interest of all parties concerned in the property and business of said railway company, and out of the proceeds thereof to pay the

wages and taxes, royalties, rents, freights, debts for supplies and interest due on securities charged on the property, to protect the same from forfeiture, and that they with all convenient speed ascertain and report the state, condition and circumstances of the property and of the debts and liabilities charged thereon or owing by said railway company, and of the nature of the security as to each indebtedness.

It is further ordered that said receivers be and they are hereby fully authorized and empowered to institute and prosecute all such suits as may be necessary in their judgment for the proper protection of the property and trust hereby vested in them and likewise to defend all such actions instituted against them as such receivers and also to appear in and conduct the prosecution or defense of any suits now pending in any court against said railway company, the prosecution or defense of which will in the judgment of said receivers be necessary for the proper protection of the property and business placed in their charge.

It is further ordered that said receivers be and they are hereby authorized in their discretion from time to time out of the funds coming into their hands, to pay the expenses of operating said property and executing their trust and all taxes and assessments upon said property or any part thereof and such rents and installments as may become due for the use of any portion of said railroad or other property, or for the rolling stock heretofore sold to said railway company and partially paid for, and also to pay and discharge all such traffic and car mileage balances as may be due to connecting and other railways, and all such loss and damage claims arising from the previous operations of said property as in their judgment on examination are proper to be paid as expenses of operation, and the current and unpaid pay rolls, vouchers and supply accounts incurred in the operation of said railroad system at any time within six months prior hereto.

It is further ordered that said receivers be and they are hereby authorized to pay out of the earnings made by them

as receivers in this cause such traffic and car mileage balances, due to connecting and other railroads and such claims for loss of and damage to freight shipments arising from the previous operation of the property in their charge as receivers as in the exercise of their discretion they shall find it necessary to pay in order to preserve the business of said railway company, although the same may have accrued more than six months prior to their said receivership.

It is further ordered that said receivers open proper books of account and cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of their said trust, and preserve proper vouchers for all payments by them made on account thereof, said accounts to be kept, so far as practical, so as to show separately the receipts and expenses of the various divisions of said railway company.

It is further ordered that each of said receivers give bond in the sum of \$50,000, conditioned that he will and truly perform the duties of his office and duly account for all moneys or property that may come into his hands, and abide by and perform all things which he shall be directed to do, said bond to be with sufficient surety to be approved by the judge of this court and to be forthwith filed in the office of the clerk of this court.

It is further ordered that said receivers be and they are hereby authorized to consider and determine which of the leases, contracts, trackages, agreements and other contractual arrangements between said railway company and any and all other parties that they may lawfully renounce or adopt they will renounce or adopt, and that pending further order of this court, none of their acts or omissions in the performance or failure to perform any thereof shall constitute or be construed to constitute an election to adopt or an estoppel to renounce any of them.

It is further ordered that as soon as it can conveniently be prepared said receivers shall file with the clerk of this court

an inventory of the properties coming into their possession as such receivers.

It is further ordered that each and every of the officers, directors, agents and employees of said railway company and all other persons be and they are hereby required and commanded forthwith, upon demand of said receivers or their duly authorized agent, to turn over and deliver to said receiver or their duly constituted representatives any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys, or other property (except the securities pledged with and held by the plaintiff as trustee under the mortgage set forth in the bill of complaint herein), in his or their hands or under his or their control, and each of such directors, officers, agents and employees, is hereby commanded and required to obey and conform to such orders as may be given them from time to time by said receivers, or their duly constituted representatives in conducting the operation of said property and in discharging their duties as receivers.

It is further ordered that said railway company and its officers, directors, agents and employees, and all other persons claiming to act by, through or under said railway company, and all other persons whosoever, are hereby enjoined and restrained from interfering in any way whatever with the possession or management of any part of the property over which said receivers are hereby appointed, or interfering in any way to prevent the discharge of their duties or their operating the same.

And it is further ordered that any party in interest may apply to this court for further directions with reference to the property and business aforesaid.

July 2, 1914.

(Enter) Howard C. Hollister, District Judge.

Maxwell & Ramsey, Union Central Building, 1 West Fourth  
Street, Cincinnati, O.,

White & Case, 14 Wall St., New York, N. Y., Solicitors  
for Plaintiff.

**Form No. 34****Order Appointing Receiver of Railway Company  
(Another Form)**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTH-  
ERN DISTRICT OF ILLINOIS, EASTERN DIVISION. No. 445.

IN EQUITY

Present Hon. George A. Carpenter, District Judge.

American Steel Foundries, Complainant,  
against

The Chicago, Rock Island and Pacific Railway Company,  
Defendant.

*Order*

On reading and filing the verified bill of complaint in this cause, and on motion of counsel for the complainant, and the defendant, the Chicago, Rock Island & Pacific Railway Company appearing by its counsel, and filing its answer admitting the allegations of said bill, and due deliberation being had, it is ordered, adjudged and decreed:

That Jacob M. Dickinson, of Chicago, in the State of Illinois, and Henry U. Mudge, of Chicago, in the State of Illinois, be and they hereby are appointed receivers of all and singular the railroads, lands, property, assets, rights and franchises of the Chicago, Rock Island & Pacific Railway Company (hereinafter called the "Railway Company"), including all other railroads and property and assets, real, personal and mixed of whatever kind or description and wherever situated, owned, leased or operated by the Railway Company, with all tracks, terminal facilities, warehouses, offices, stations, shops and all other buildings and appurtenances of every kind, and all locomotives, cars and other rolling stock and equipment of every kind and description, and all tools, machinery, furniture, fixtures, coal, materials and supplies, and all books of account, records and other books, papers, cash in bank and all other monies, all rents, things in action, credits, stocks,



bonds, securities, deeds, leases, contracts, muniments of title, bills receivable, rents, issues and profits and income accruing and to accrue, as well as all leasehold interests and operating and other contracts, and all rights, interests, easements, privileges and franchises of the Railway Company, and all other assets of the Railway Company of every kind and description.

2. That said receivers be and they are hereby authorized and directed immediately to take possession of all and singular said railroads, rolling stock, franchises, rights, property, and premises, and to run, manage, maintain and operate said railroads and property, wherever situated or found, whether in this state, judicial circuit, or elsewhere, including such railroads and property as the Railway Company holds, controls or operates under lease, stock ownership or otherwise, and to use, manage and conduct the business of the Railway Company in such manner as in their judgment will produce the best results, and to this end to exercise the authority and franchises of the Railway Company, and discharge all public duties obligatory upon it, and to preserve said railroads and property in proper condition and repair, and to manage and operate said railroads and property according to the requirements of the valid laws of the several states in which the same are situated, and in the same manner that the Railway Company would be bound to do if in possession thereof, and to employ and discharge and fix the compensation of all officers, attorneys, managers, superintendents, agents and employes; to keep such property insured to such extent as to them may seem advisable, to continue, and carry on or to establish such personal injury insurance and pension systems in respect of the officers and employers of the Railway as such receivers may deem advisable, and to make such payments and disbursements as may be needful and proper in their judgment in so doing, and to collect and receive the income, rents, revenues and tolls of said property, and to collect all outstanding accounts, things in action or credits due or owing

the Railway Company, and all dividends on stock and interest on bonds or other securities belonging to it, and to hold and retain the net revenues thereof in such manner and to the end that the same may be applied under this order and such orders as this court may hereafter make.

3. That said receivers be and they are hereby authorized and empowered to institute and prosecute within this state or elsewhere and in their name as receivers, or in the name of the Railway Company, as they may be advised by counsel, all such suits as in their judgment may be necessary for the proper protection of said property, and the discharge of their trust, and likewise to defend, compromise or settle all such actions instituted against them as receivers, and to appear in and conduct the prosecution or defense of or compromise or settle any actions, proceedings or suits now pending or which may hereafter be brought in any court or before any officer, department, commission or tribunal, to which the Railway Company is or shall be a party, which in the judgment of said receivers affect or may affect property of which they are hereby appointed receivers, but no payments shall be made by said receivers in respect of any such suits, actions or proceedings other than suits relating to wages of employes, personal injuries or damages to property in transit or damages caused by fire in the operation of the railroads without the further order or direction of this court; and no action taken by the receivers in the defense or settlement of any such actions or suits against the Railway Company shall have the effect of establishing any claim upon or right in the property or funds in the possession of the receivers so as to alter or change any existing equities or legal rights of the parties.

4. That said receivers be and they hereby are authorized in their discretion from time to time out of the funds coming into their hands to pay all taxes due or to become due upon the properties of the Railway Company, and to pay the expenses of operating said properties and executing the trust

and to pay the wages, salaries and compensation of all officers, attorneys, managers, superintendents, agents and employes retained or employed by the receivers, and to pay and discharge all such traffic and car mileage balances and amounts for car and equipment repairs as may be due or become due to connecting or other railroads or other common carriers and also all interest which may be or become due upon bonds of the Railway Company, secured by mortgage or lien upon all or any part of its railroads or terminal or other property, and any salaries and wages due and payable for services rendered to the Railway Company in the usual and customary operation of its properties, and any unpaid pay rolls, vouchers and supply accounts heretofore incurred in the operation of said railroads; also all unpaid and outstanding pay checks and wage checks representing labor actually performed for the Railway Company, and all amounts now or hereafter payable by sureties upon all supersedeas or appeal bonds executed by said sureties without security for the benefit of the Railway Company.

5. That said receivers shall open proper books of account, and cause to be kept therein due and proper account of the earnings, expenses, receipts and disbursements of the railroads and property of which they are hereby appointed receivers, and shall preserve proper vouchers for all payments made by them on account thereof, and shall deposit all monies coming into their hands in some bank or banks or trust company or trust companies, and report to the court of the depositaries so selected.

6. That all persons, firms and corporations having in their possession any of the property and premises of which receivers are hereby appointed shall forthwith deliver said property and premises to said receivers, and each and every of the officers, directors, agents and employes of the Railway Company is hereby required and commanded to turn over and deliver to said receivers or their duly constituted representatives any and all books of account, vouchers and

papers, deeds, leases and contracts, bills, notes, accounts, monies, or other property in their hands or under their control belonging to or in the possession of the Railway Company, or to which it is or may become entitled, and each of said officers, directors, agents and employes is hereby commanded and directed to abide by and conform to such orders as may be given from time to time by said receivers or their duly constituted representatives in conducting the operation of said property and in the discharge of their duties as receivers.

7. That the Railway Company and the officers, directors, agents, attorneys and employes of the Railway Company and all other persons claiming to act by virtue of or under it and all other persons, firms and corporations whatsoever and wheresoever situated, located or domiciled, be and they hereby are restrained and enjoined from interfering with, attaching, levying upon or in any manner whatsoever disturbing any portion of the property and premises of which receivers are hereby appointed or from taking possession of or in any way interfering with the same or any part thereof, or from interfering in any manner to prevent the discharge by said receivers of their duties or the operation of said property and premises under the order of this court.

8. That said receivers shall retain possession of and continue to discharge the duties or trusts aforesaid until the further order of this court, and from time to time make report of their doings in the premises, and may from time to time apply to this court for such other and further order and direction as they may deem necessary and requisite to the due administration of their trust.

9. That within sixty (60) days from the entry of this order said receivers file with this court an inventory of the property coming into their possession as such receivers, and also file a separate report or reports showing the amount of monies coming into their hands as such receivers, derived

from the operation of the railroads and property of the Railway Company prior to the date of the entry of this order.

10. That within ten (10) days from the entry of this order each of said receivers execute a bond in the sum of one hundred thousand dollars (\$100,000) and file the same in the office of the clerk of this court, with one or more sureties approved by this court or one of the judges thereof, for the benefit of whom it may concern, conditioned to the effect that such receiver will well and truly perform the duties of his office, and duly account for all money and property which may come into his hands and abide by and perform all things which he shall be directed by the court to do.

11. That the complainant herein is hereby authorized to apply to any other court of competent jurisdiction for such order or orders in the premises as the complainant may deem necessary in aid of the orders issued by this court. The right is reserved to the parties hereto to apply to the court for any further or other instruction to the receivers, and the court reserves the right to make such further orders as may be proper, and to modify this order, and in all respects to regulate and control the conduct of said receivers.

12. In case of the death, resignation or removal of one or more of the receivers hereby appointed, and the appointment of a successor or successors to the receiver or receivers who shall so die, resign or be removed, all of the provisions of this order shall apply to such successor or successors without further order or direction of the court. In case of the death, resignation or removal of one or more of the receivers hereby appointed, and in case no successor shall be appointed to such receiver or receivers, who shall so die, resign or be removed, all of the provisions of this order shall apply to the surviving receiver or receivers without further order or direction of the court.

Enter: \_\_\_\_\_.

Carpenter, District Judge.

Dated April 21, 1915.

**Form No. 35****Supplemental Order Appointing Receiver of Railway**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION  
No. 445. IN EQUITY

American Steel Foundries, Complainant,  
against  
The Chicago, Rock Island & Pacific Railway Company,  
Defendant.

*Supplemental Order*

On motion of the receivers herein, by their solicitor, complainant being represented in court by its solicitors, it is ordered, adjudged and decreed:

1. That said receivers be, and they hereby are, authorized in their discretion, out of the funds coming into their hands as receivers, to pay or cause to be paid all checks, vouchers, drafts or warrants executed, drawn or issued in the usual course of business by the duly authorized officers and agents of the Railway Company prior to the appointment of the receivers herein.

2. That the receivers heretofore appointed by the court be, and they hereby are, authorized and directed to compromise and settle any actions, proceedings or suits now pending or which may hereafter be brought in any court or before any officer, department, commission or tribunal, and to make all necessary payments in compromise of such suits or proceedings, which in the judgment of the receivers may be for the benefit or advantage of the property in their possession as such receivers.

3. That said receivers be, and they hereby are, authorized in their discretion to compromise, settle or pay, out of the funds from time to time coming into their possession as receivers, all claims against the Railway Company for services rendered or on account of liability for loss, damage or injury,

either as to person or property, which might become, through judgment or otherwise, a lien upon the property in their possession as such receivers.

Enter: \_\_\_\_\_.

Carpenter, Judge.

April 21, 1915.

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### Form No. 36

#### Order Appointing Temporary Receiver of Railway Company

DISTRICT COURT OF THE UNITED STATES, DISTRICT OF  
MASSACHUSETTS. NO. 744. IN EQUITY

Intercontinental Rubber Company, Complainant,

v.

Boston & Maine Railroad, Defendant.

*Order Appointing Temporary Receiver*

August 29, 1916

This cause came on to be heard this August 29, 1916, and was argued by counsel, and upon consideration, the court being fully advised in the premises, it is ordered, adjudged and decreed:

1. That James H. Hustis, a resident of Winchester, Massachusetts, be and he hereby is appointed temporary receiver of all the railroads, lands, property, assets, rights and franchises of the Boston & Maine Railroad as incorporated under the laws of Massachusetts and as incorporated under the laws of New Hampshire and as incorporated under the laws of Maine, including all railroads and other property, assets, real, personal and mixed, of whatever kind or description and wherever situated, owned, leased, or operated by said Boston & Maine Railroad, with all tracks, terminal facilities, warehouses, offices, stations, shops and all other buildings in the premises of whatever kind, and all locomotives, cars and other rolling stock

and equipment of whatever kind or description, and all tools, machinery, furniture, fixtures, coal, materials and supplies and all books of account, records and other books, papers, cash in bank and all other moneys, all debts, things in action, credits, stocks, bonds, securities, debts, leases, contracts, bills receivable, rents, issues, profits and income accruing and to accrue, as well as all leasehold interest, operating and other contracts and all rights, interests, easements, privileges and franchises of said Boston & Maine Railroad, and all other assets of every kind and description.

2. That said receiver be and he hereby is directed immediately to take possession of all said railroad's rolling stock, franchises, property and premises, and to run, manage, maintain and operate said railroad and property wherever situated or found, whether in this commonwealth, judicial circuit or elsewhere, including such railroads and property as the said Boston & Maine Railroad holds, controls or operates under lease or otherwise, and to use, manage and conduct such business in such manner as in his judgment will produce the best results, and to this end exercise the authority and franchises of said Boston & Maine Railroad, and to discharge all the public duties obligatory upon it and to preserve said railroad's property in proper condition and repair and to manage and operate said railroad's property according to the requirements of the valid laws of the various states in which same are situated, and to employ, discharge and fix the compensation of all officers, attorneys, managers, superintendents, agents and employees; and to keep said property insured to such an extent as the receiver may deem advisable; to continue and carry on such pension systems in respect to officers and employees of the said Boston & Maine Railroad as the receiver may deem advisable; to collect and receive the income and bills of said property and to collect all outstanding or accruing accounts, things in action and credits due or owing to the said Boston & Maine Railroad, and to hold and retain the net revenues thereof in such manner



and to the end that the same may be applied under this order and such orders as this court may hereafter make.

3. That all persons, firms and corporations having in their possession any of said property and premises of which a receiver is hereby appointed shall deliver said property and premises to said receiver, and each and every of the officers, directors, agents and employees of said Boston & Maine Railroad be and they are hereby required and commanded forthwith to deliver and turn over to said receiver or his duly constituted representative any and all books of account, vouchers and papers, debts, leases and contracts, bills, notes, accounts, moneys or other property in their hands or under their control belonging to or in the possession of said Boston & Maine Railroad to which it is or may become entitled, and each of said officers, directors, agents, and employees is hereby commanded and directed to abide by and conform to such orders as may be given from time to time by said receiver or his duly constituted representative in conducting the operation of said property and in the discharge of his duties as receiver.

4. That the said Boston & Maine Railroad and the officers, directors, agents, attorneys and employees of said corporation and all other persons claiming under and by virtue of said railroad company and all other persons, firms and corporations whatsoever and wheresoever situated, located, or domiciled are hereby restrained and enjoined from interfering with, attaching, levying upon, or in any manner whatsoever disturbing any operation of, the property or premises of which a receiver is hereby appointed or in taking possession thereof or in any way interfering with the same or any part thereof or in interfering in any manner to prevent the discharge by said receiver of his duties, and this order shall apply not only to property in possession of said Boston & Maine Railroad, but to all the reversions and remainders thereof.

5. The receiver shall within ten days of the date of this order file herein a bond for \$100,000 with a surety or sureties approved by a judge or a clerk of this court conditioned that

he will fulfil and perform his duties herein and in any ancillary proceedings wherein he may be appointed, well and truly to account for all money and property coming into his hands as such receiver and perform all things which he is herein or may hereafter be directed to perform in this cause, or in any ancillary proceeding wherein he is ancillary receiver.

6. The said receiver shall within ninety (90) days file with the court an inventory of the property coming into his possession as such receiver. The said receiver shall forthwith open books of account and cause to be kept therein due and proper account of the earnings and expenses, receipts and disbursements of the railroad property of which he is appointed receiver, and shall preserve proper vouchers for all payments made by him on account thereof, and shall deposit the moneys coming into his hands in some bank or banks, reporting to the court the bank or banks so selected, and shall make to the court at least once in six (6) months a report of all receipts and expenses. Such accounts may in the discretion of the receiver be kept in such manner as to show the receipts from each of the railroad properties under direct lease to the defendant and the expenditures on account of each such property.

7. That the receiver is hereby authorized at his discretion from time to time out of the funds coming into his hands to pay all taxes due or becoming due from the said Boston & Maine Railroad upon the property above described, or any of it, any expense of printing or sending out customary reports on the road, and to pay the expenses of operating said properties and executing the trust, and to pay the wages and salaries of all officers, attorneys, managers and superintendents, agents, or employes employed or retained by the receiver, and any payrolls, salaries, vouchers, supply accounts, operating or other current charges heretofore incurred within six months last past and now unpaid, and also to make any payments which he may deem necessary or advisable under any contract heretofore entered into for the maintenance or equipment of any railroad

owned or operated by said Boston & Maine Railroad, and also to make such payments of interest on any bonds issued or assumed by the said railroad as may in his judgment be necessary to prevent the prior maturing of the principal of such bonds.

8. The said receiver is authorized until further order of this court to make from income accrued or hereafter accruing such payments, and to do and perform such other acts and things, as he may deem necessary or expedient to preserve, or prevent the forfeiture of, any lease, leasehold estate, contract or contract right now vested in or belonging to the said Boston & Maine Railroad; but no such payment or act on the part of the receiver shall operate as an election on his part to assume the obligation of any such lease or contract, or to accept or become vested with any such leasehold estate or contract right, nor shall any such payment or act on the part of the receiver operate to charge the obligation of any such lease or contract upon the interest which any party to this suit may have in the estate in the hands of the said receiver. The court reserves the right hereafter to direct the said receiver to surrender and reject, or to adopt and assume any lease, leasehold estate, contract, or contract rights now vesting in or belonging to the said Boston & Maine Railroad, and no such lease, leasehold estate, contract, or contract right shall be taken as adopted by the receiver or as chargeable upon him or upon the interest of any party herein to the estate in his hands except as hereafter expressly ordered by the court.

9. That said receiver be and is authorized and empowered to institute and prosecute within this commonwealth or elsewhere, and in his name as receiver or in the name of the said Boston & Maine Railroad, all such suits as may be advised by counsel for the proper protection of said property and the discharge of the trust, and to prosecute to final judgment or to compromise as may be in his judgment advisable all pending suits brought by or in behalf of said Boston & Maine Railroad, and likewise to defend, compromise, or settle all actions pending

or instituted against said Boston & Maine Railroad, but no payment shall be made by said receiver in respect to any of such suits other than suits relating to wages of employees, personal injuries, or damages to property in transit, or damages caused by fire in the operation of said railroad without the order or direction of the judge, and no action taken in defense of any such action or suit against said Boston & Maine Railroad shall have the effect of establishing any claims upon the right in the property or funds in the possession of the receiver or to alter or change the existing equities or legal rights of the parties.

10. The said receiver shall retain possession and continue to discharge the duties or trusts aforesaid until the further order of this court, and shall from time to time make report of his doings in the premises and from time to time may apply to this court for such other and further direction as he may deem necessary and requisite to the due administration of this trust.

11. The complainant herein is authorized to apply to any other court to obtain jurisdiction for such order or orders in the premises as the complainant may deem necessary to carry out any of the orders issued by this court. The right is reserved to the parties hereto to apply to the court for any other or further instructions to said receiver, and this court reserves the right to make such further orders as may be proper and to modify this order and in all respects to regulate and control the conduct of said receiver.

W. L. Putnam, Circuit Judge.

## FORMS OF MOTIONS

**Form No. 37****Motion for Appointment of Receiver**

(Form under Civil Code Procedure)

A B, Plaintiff,

v.

C D, Defendant.

*Motion for Appointment of Receiver*

Now comes A B, the plaintiff herein, and moves the court for the appointment of a receiver as prayed for in his petition herein.

A B,

By ———, his attorney.

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**Form No. 38****Motion to Vacate or Revoke Appointment of Receiver \***

CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI

Thompson Price et al., Plaintiffs,

v.

Bankers Trust Company, Defendant.

*Motion to Vacate or Revoke Order of Appointment*

Now comes defendant, Bankers Trust Company of St. Louis, separate and apart from its codefendants herein, and moves the court to revoke, vacate and annul the order heretofore made in the above-entitled cause appointing a temporary receiver herein, for reasons as follows:

1. Because the plaintiffs' petition herein, upon which order was made, does not state any facts or grounds sufficient to authorize the appointment of a receiver, or the granting of any equitable relief whatever in behalf of plaintiffs or either of them.

\* Motion found reported in Price v. Bankers Trust Co. (1915), 178 S. W. 745.

2. Because the judge of this court, who made this order appointing a receiver, had no power or jurisdiction to appoint a receiver to take charge of the property mentioned in said petition, to wit, the land situated in Iron County, Mo., alleged to contain 652 acres, and the land situated in the counties of Iron and St. Francois, Mo., alleged to contain 5,036.44 acres, all of which property is outside and beyond the jurisdiction of any judge of this court; and this court has no jurisdiction over said property and can not lawfully maintain a receiver to take said property into his possession and control.

3. Because said order appointing a receiver was made upon an ex parte presentation of the plaintiffs' petition herein, without any evidence to support the same, without any notice to this defendant, and as the result of collusion between plaintiffs and one of the defendants herein, the Arcadia Country Club.

4. Because the plaintiffs' petition herein, the ex parte presentation of which, together with the collusive consent of defendant, Arcadia Country Club, was the sole and only showing upon which said order appointing a receiver was made, does not state facts sufficient to constitute any cause of action, and does not set forth any grounds sufficient to authorize the exercise of any jurisdiction in equity in behalf of the plaintiffs or either of them, by way of appointment of a receiver or other equitable relief.

5. Because, in so far as the plaintiffs or either of them have any cause of action or ground for complaint or redress in reference to any of the matters or things alleged in their petition, they, and each of them, have other remedies, as well as perfect and complete remedies at law, and therefore have no right to any equitable relief by way of appointment of receiver or otherwise.

6. Because the statute under which it is alleged in plaintiffs' petition that defendant, Arcadia Country Club, was organized, to wit, article ten of chapter thirty-three, Revised Statutes of Missouri, 1909, affords a complete, adequate and exclusive remedy regarding the matters and things alleged

in the petition; and this court can not lawfully keep or maintain a receiver in charge of the assets and affairs of said Arcadia Country Club in this proceeding as instituted by plaintiffs or upon their said petition as presented at the time said receiver was appointed, and as now on file herein.

7. The appointment of said receiver was obtained as the result of the consent of defendant, Arcadia Country Club, which was and is acting in collusion with the plaintiffs for the purpose of hindering, delaying and obstructing this defendant in its lawful right to foreclose the valid mortgage liens mentioned in plaintiffs' petition, which mortgages defendant holds as security for just and valid obligations of said Arcadia Country Club. The defendant, Arcadia Country Club and its board of governors, prior to the commencement of this proceeding, had promised and agreed with this defendant that they would not in any manner obstruct or oppose this defendant in the foreclosure of the said mortgages, and even consented to quitclaim the said mortgaged property to this defendant if this defendant should so desire; and this defendant says that the appointment of a receiver as applied for and obtained herein, is the result of collusion between the plaintiffs and defendant, Arcadia Country Club, whereby said club and certain of its board of governors seek to evade their said promise and agreement not to obstruct or oppose this defendant in the foreclosure of said mortgages, and whereby they seek to evade the law relating to temporary injunctions and the giving of an injunction bond, and at the same time, by means of the appointment of a receiver, hinder and restrain this defendant in its lawful right to foreclose said mortgages; and further, that, while on the face of the proceedings herein said receiver was appointed on the application of the plaintiffs named in the petition, in reality said appointment was brought about at the instance of defendant, Arcadia Country Club and certain of its board of governors. And this defendant says that the appointment of a receiver, obtained in such manner and for such purpose, is unauthorized, and should be vacated.

**Form No. 39****Motion to Reclaim Property in Possession of Receiver**

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN  
DISTRICT OF OHIO, WESTERN DIVISION. No. 41.  
IN EQUITY

Bankers Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

*Motion to Reclaim Property in Possession of Receivers*

To the Honorable Howard C. Hollister, Judge of the District  
Court of United States, Southern District of Ohio, West-  
ern Division:

Now comes E. Blackwell, administrator of the estate of James Brown, deceased, by his attorney, C. O. Rose, and respectfully shows the court that the said James Brown in his lifetime, was employed by the defendant during the month of December, 1912, and claims that while so employed he received bodily injuries by reason of the negligence of defendant, especially an injury in and upon the jaw, which said injury said E. Blackwell claims, developed into cancer and caused the death of said James Browne on or about December 24, 1913; and that defendant claims to have paid said James Brown in his lifetime, on or about May 1, 1913, the sum of seventy-five (\$75.00) dollars in compromise settlement of said injuries, which for want of knowledge said E. Blackwell denies, and if so disputes that it was a valid settlement.

That at the time of his death the said James Brown was survived by a widow, Sarah Brown, as his sole heir and beneficiary, and claims that by reason of said wrongful death, the estate of said James Brown, deceased, became vested with a cause of action against defendant for damages, and that the sole beneficiary thereof was said Sarah Brown, his widow.

That said Sarah Brown by her attorney, C. O. Rose, presented said claim to defendant on or about May 19, 1914;



and that after negotiations, on June 30, 1914, defendant, by its general claim agent, Mr. E. L. Williams, and said Sarah Brown, by her said attorney, C. O. Rose, each being thereunto duly authorized, made the following agreement: Defendant agreed to pay at once the sum of six hundred (\$600) dollars and costs of administration, amounting to eight and forty one-hundredths (\$8.40) dollars in full compromise settlement of said claim and cause of action, to the administrator of the estate of said James Brown, deceased, upon the issuance of letters of administration and the approval of the Probate Court of Hamilton County, Ohio, and said Sarah Brown agreed to the same, and to accept said sum.

Defendant then and there expressly stated that it made said agreement to avoid expense of litigation; and said Sarah Brown then and there expressly stated that she made said agreement to avoid delay; said E. Blackwell is informed that it was the intention of said E. L. Williams to draw and rush through a voucher as soon as the authority of the probate court was obtained and that the voucher was not drawn before the appointment of the receivers herein, but if drawn and issued before the appointment of the receivers, there were funds in bank to pay same;

That thereafter, to wit, on July 1, 1914, E. Blackwell made application to said probate court for letters of administration on the estate of said James Brown, deceased, and was on said date duly appointed as such by said court and thereupon accepted said appointment and duly qualified and gave bond accordingly; and thereupon said E. Blackwell, as such administrator, presented the matter of the above agreement to the Honorable William H. Lueders, judge of said court, and the said court being fully advised in the premises, confirmed and approved said agreement.

And thereafter, on the morning of July 2, 1914, said E. Blackwell, as such administrator presented a written application for said settlement addressed to said probate court, together with a written entry allowing said settlement, and a

written form of release of said claim in favor of said defendant, to Carl Phares, Esquire, of counsel for defendant, and thereupon said Carl Phares, as attorney aforesaid, approved the form of said papers and endorsed same accordingly, and so advised said E. L. Williams, as general claim agent aforesaid, by telephone; and said E. L. Williams then approved and confirmed said agreement of settlement and informed said Blackwell as such administrator to call at his office for said sum of money, and to deliver said release, that to the best of the knowledge and belief of affiant, all of the above occurred prior to eleven o'clock A. M. July 2, 1914; that said E. Blackwell immediately proceeded to said probate court and placed said application for settlement on file in said court; and the said William H. Lueders, judge of said court, endorsed said entry of settlement in accordance with the agreement and understanding had the day before, and entered same of record;

That while the above was transpiring on July first and on the morning of July second, defendant, knowing that the bill of complaint was about to be filed, but without notice to said E. Blackwell, administrator aforesaid, and wholly unknown to him, was preparing its answer in this cause; and on July second at nine o'clock and fifteen minutes A. M. the bill of complaint in printed form, consisting of seventeen pages, and an exhibit of seventy-five pages was filed by complainant and a subpoena for defendant was immediately issued and served at once by Eugene L. Lewis, United States Marshal, by G. W. Stenorer, Deputy, on F. M. Carter, as treasurer and assistant secretary of defendant company, in the office of the clerk of this court; and the defendant, at the hour of nine o'clock and forty-five minutes A. M. on said second day of July, filed its answer in this cause in printed form, including the date July, 1914, but not the day of the month; that the order appointing said Judson Harmon, Esquire, and Rufus B. Smith, Esquire, as receivers of defendant was filed at eleven o'clock and fifteen minutes A. M. on said second

day of July; and the order approving the bonds of said receivers was filed on said day at one o'clock.

That thereafter, on the same day the said E. Blackwell, as such administrator, presented himself to said E. L. Williams, as said claim agent and tendered said release in full, that said E. L. Williams declined to pay said sum of money or any sum whatever, or to accept said release, for the reason that this honorable court had appointed said receivers for defendant company, and that the defendant had been ordered by said receivers to turn over the possession of all funds to said receivers; that said E. Blackwell then learned of this action for the first time; that Judson Harmon and Rufus B. Smith, as said receivers have refused to pay said sum or any sum whatever to said E. Blackwell, as administrator aforesaid, although a demand was made therefor; and that neither said receivers nor said defendant company has paid said sum or any part thereof to said E. Blackwell, as administrator, aforesaid; that the sum of six hundred (\$600) dollars, together with eight and forty hundredths (\$.40) dollars costs was in equity and good conscience set aside by defendant for the payment and discharge of said claim and cause of action before the appointment of said receivers by this honorable court.

Wherefore, said E. Blackwell, as administrator aforesaid, by his attorney, C. O. Rose, moves the court to make an order declaring that said sum of six hundred and eight and forty-one hundredths (\$608.40) dollars was set aside for the uses and purposes above mentioned and that said company held said fund as trustees for the benefit of the estate of said James Brown, deceased, and for said Sarah Brown, as the sole beneficiary thereof, and that said receivers for said defendant company, Judson Harmon and Rufus B. Smith, took possession of said fund, subject to said trust, and requiring said receivers to turn over said sum of money to said E. Blackwell, as said administrator, upon the delivery to said receivers for said company of said release, and for all other equitable relief.

And further said E. Blackwell, as administrator, aforesaid, by his attorney, moves the court for an early hearing of this matter.

C. O. Rose,  
Attorney for E. Blackwell, as Administrator of the  
Estate of James Brown, Deceased.

State of Ohio, Hamilton County, ss.:

Charles O. Rose, being first duly sworn, on oath says that the allegations contained in the above motion are true as he truly believes.

Chas. O. Rose.

Sworn to before me and subscribed in my presence this  
August 6, 1914.

A. M. Rulison,  
[SEAL] Notary Public, Hamilton County, Ohio.  
Forty cents due notary.

Received a copy of the above motion this August 6, 1914,  
and notice that it will be called for hearing on Saturday,  
August 8.

Maxwell & Ramsey, M. H.,  
Morrison R. Waite.

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## Form No. 40

### Motion to Confirm Accounts and Discharge Receiver

A B, Plaintiff,  
v.  
C D, Defendant.

#### *Motion to Confirm Accounts and Discharge Receiver*

Now comes ——— receiver and moves for an order confirming his accounts heretofore filed herein and discharging him and his bondsman from further liability in this case.

———, Attorney for receiver.

## FORMS OF APPLICATIONS BY RECEIVER

**Form No. 41****Application of Receiver for Authority to Purchase Equipment**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.

No. 116. IN EQUITY

The New York Trust Company and Elias J. Jacoby, Plaintiffs,  
v.

The Cincinnati, Findlay & Fort Wayne Railway Company,  
the Cincinnati, Hamilton & Dayton Railway Company,  
Bankers Trust Company and Central Trust Com-  
pany of New York, Defendants.

*Application of Receiver for Authority to Purchase Equipment*

Now comes John B. Carothers, as receiver of the Cincinnati, Findlay & Fort Wayne Railway Company, heretofore appointed in the above entitled cause, and respectfully shows to the court as follows:

The Cincinnati, Findlay & Fort Wayne Railway Company has at the present time only six freight cars. These are gondola cars. Under the instructions of the National Board of Defense, as recognized and established by the United States Government, the railroads of the United States at the present time, owing to the unusual conditions existing by reason of the war, are practically prohibited from using gondola cars in local traffic, especially in such trade as handling stone and other local commodities.

That your receiver has requests daily for at least twenty cars to handle crushed stone, and in order to properly operate the railroad beginning about the middle of the month of September, 1917, will require about fifty gondola cars a day to handle the beets which will be shipped in order the lines of the railway to the beet sugar plant at Findlay, Ohio. The number of freight cars now on hand is so small as to make them entirely inadequate for the handling of the absolute requirements of the business of the railway.

Accordingly, in order to enable the railroad to furnish transportation facilities to those dependent upon it, and to preserve and protect the property constituting the receivership estate, it is absolutely necessary to acquire at as early a date as possible at least twenty gondola cars for use in the freight business. Your receiver says that inquiry discloses that such cars can be purchased at a total cost of about \$400 per car, and that in his opinion the cars are worth that price, and, therefore recommends that authority be given the receiver to immediately contract for twenty gondola freight cars.

John B. Carothers,

Receiver of the Cincinnati, Findlay & Fort Wayne  
Company.

Squire, Sanders & Dempsey, Solicitors for Receiver.

State of Ohio, Cuyahoga County, ss.:

John B. Carothers, being first duly sworn, says that the facts stated in the foregoing application are true, as he verily believes.

(Signed) John B. Carothers.

Sworn to and subscribed before me this June 27, 1917.

[SEAL]

Ellis R. Diehm, Notary Public.

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## Form No. 42

### Applications for Receiver's and Attorney's Fees

A B, Plaintiff,

v.

C D, Defendant.

Now comes ———, receiver herein and respectfully reports to the court that all the real and personal assets of the defendant which came into his hands as receiver have been sold under orders of court, that the current receipts from collection of accounts outstanding and sales of personalty and

real estate amount to \$—— and the current disbursements of the receiver \$——.

Your applicant further says that from the time of his appointment to the present time he has had the constant attendance and advice of ——, A. D., his attorneys and counsel in the administration of the estate in his hands as receiver and they will be required to render further service in the matter of filing of his account and the final disposition of this case.

Wherefore your applicant prays this court for an order allowing fees to himself and his attorneys.

——, Receiver.

——, Attorney for Receiver.

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### Form No. 43

#### Application by Receiver for Fees

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF OHIO, WESTERN DIVISION.

No. 21. IN EQUITY

Frances H. Williamson, Plaintiff,

v.

Justus Collins, Eugene Zimmerman, George H. Collins and  
the Superior Portland Cement Company, a Corporation,  
Defendants.

#### *Application*

Now comes Guy W. Mallon, receiver herein, and makes application to the court for an order authorizing the payment to said receiver of the sum of twenty-five hundred dollars (\$2,500) as fees for services rendered by him as such receiver and as attorney in the within cause from May 1, 1916, to October 1, 1916.

Guy W. Mallon, Receiver.

**Form No. 44****Application by Receiver for Additional Powers**

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF OHIO, WESTERN DIVISION.

NO. 21. IN EQUITY

Frances H. Williamson, Plaintiff,

v.

Justus Collins, Eugene Zimmerman, George H. Collins and  
the Superior Portland Cement Company, a Corporation,  
Defendants.

*Application*

Now comes Guy W. Mallon, receiver herein, and represents to the court that the successful operation of the business of the Superior Portland Cement Company depends largely upon the giving to the trade an assurance that the operation will be continuous and permanent throughout the year, 1914; that in order to operate the mill, extensive repairs must be made forthwith; that to secure contracts, salesmen must be employed and sales made upon credit in accordance with the custom of the trade, and at times date of payment by contractors extended to the time of completion of the work, that competition among cement companies in this district is keen, and that to meet such competition the receiver must conduct the business actively and with as few restrictions as possible.

The receiver further represents to the court that the decree heretofore entered herein, directed him "to operate the business of said company and to preserve its assets until further orders of this court," that he is uncertain as to the exact scope of the powers thereby conferred upon him; that he believes it would be for the best interest of the estate to define more specifically said powers and to grant such further powers as may be necessary to meet the conditions above set forth.

Where the receiver herein prays the court for an order granting him the following powers:



To make necessary repairs to the mill, not to exceed \$10,000.

To employ not to exceed three salesmen at salaries heretofore paid.

To erect a clinker platform and conveyor, if the same will, in his opinion, add materially to the efficiency of the plant.

To announce to former customers and generally to the trade, that the manufacture of cement will be continued without interruption during the year 1914.

To enter into contracts and to extend credit to purchasers in accordance with the former custom of the business and the exigencies of the trade in general.

To meet competition, to manufacture, to seek business both from old customers and from new customers, and in general to operate the business as fully as the corporation operated the same, and in the manner best calculated, in his opinion, to fully protect the trade and good will of the company, to the end that the business of the company may be preserved as well as its assets, and that it may be returned to the stockholders as a going concern.

Guy W Mallon, Receiver.

**Form No. 45****Application by Receiver to Borrow Money and Issue  
Promissory Notes**

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF OHIO, WESTERN DIVISION.  
No. 21. IN EQUITY

Frances H. Williamson, Plaintiff,

v.

Justus Collins, Eugene Zimmerman, George H. Collins and  
the Superior Portland Cement Company, a Corporation,  
Defendants.

*Application*

Now comes Guy W. Mallon, receiver herein, and shows to the court that in order to meet the current operating expenses of the Superior Portland Cement Company, it has become necessary for him to borrow the sum of twenty thousand dollars (\$20,000) which sum he is of the opinion can be repaid from the payments which will be made during the months of May and June for cement heretofore sold by him.

The receiver therefore asks the court for authority to borrow of the Fifth-Third National Bank of Cincinnati, the sum of twenty thousand dollars (\$20,000) and to execute to said bank his promissory note in the sum of \$20,000 payable on demand, with interest at the rate of six per cent. per annum and to pledge to said bank as security for the payment of said note, and to make due assignment thereof to said bank the accounts receivable now held by said receiver; and to further secure said note, to give to said bank a lien upon the cement now on hand in the stock house of the mill at Superior, Ohio, and upon all cement by him hereafter manufactured, such lien, however, not to interfere with the sale and shipment of cement for and on account of said bank.

Guy W. Mallon, Receiver.

**Form No. 46****Application by Receiver to Borrow Money and Pledge Accounts**

The receiver herein represents to the court that the Superior Portland Cement Company on the 19th of September, 1913, sold to the Commercial Credit & Investment Company of St. Louis, Mo., certain of its book accounts under the terms of a contract which has been filed as an exhibit herein; that said contract is still in force; that thereunder there is due to the Commercial Credit & Investment Company the sum of \$16,131.59; that said Commercial Credit & Investment Company holds as assignee or transferee under said contract accounts receivable of the Superior Portland Cement Company amounting to \$26,049.85; that these debtors are very slow in making payment to the Commercial Credit & Investment Company, claiming in some instances that they are in doubt as to whom they should make payment; and in other instances that their accounts were assigned without their knowledge or consent, and they object to such assignment; that the Commercial Credit & Investment Company is charging upon balances due interest at the rate of one per cent. per month; that of these accounts receivable in the hands of the Commercial Credit & Investment Company at least \$20,000 in amount would be readily collectible in the hands of the receiver.

The receiver further represents that the taxes due upon the property of the Superior Portland Cement Company are \$4,165.69; that unless said taxes are paid by January 1, 1914, a penalty will accrue thereon; that there are no funds in his hands to make payment of said taxes, nor to pay the balance due the Commercial Credit & Investment Company; that it would be for the best interests of the estate and prevent loss to borrow money with which to make payment of the two items aforesaid.

Wherefore, the receiver prays the court for an order authorizing him to borrow the sum of twenty thousand dollars (\$20,000), and to make payment, first, to the Commercial

Credit & Investment Company of St. Louis of \$16,131.59 upon the reassignment and transfer to the Superior Portland Cement Company, or its receiver herein, of all accounts receivable held by said Commercial Credit & Investment Company, and the execution and delivery by said Commercial Credit & Investment Company of a surety company bond in the sum of ten thousand dollars (\$10,000) conditional upon making a true accounting and full settlement of all matters between said Commercial Credit & Investment Company, and said the Superior Portland Cement Company and a return by said Commercial Credit & Investment Company without charge to said Superior Portland Cement Company of all money which may hereafter be paid to said Commercial Credit & Investment Company as collections on said accounts receivable and of all other money belonging to said the Superior Portland Cement Company which may in any manner come into the hands of said Commercial Credit & Investment Company or under its control; and second, to pay to the Auditors of Scioto and Lawrence Counties \$4,165.69, the taxes aforesaid; and further authorizing said receiver to pledge to the lender of said \$20,000, as security for the repayment of the same with interest not to exceed six per cent. per annum, accounts receivable of said the Superior Portland Cement Company in an amount of \$40,000 and acceptable to said lender.

Guy W. Mallon, Receiver.

**Form No. 47****Application by Receiver for Order Allowing Delayed Claims**

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF OHIO, WESTERN DIVISION. No. 21. IN EQUITY

Frances H. Williamson, Plaintiff,

v.

Justus Collins, Eugene Zimmerman, George H. Collins and  
the Superior Portland Cement Company, a Corporation,  
Defendants.

Now comes the receiver herein and shows to the court that after notice had been given to creditors by the receiver by publication to file their claims against the Superior Portland Cement Company and most of said creditors had filed their claims pursuant to said notice and the same had been allowed by order of court, the firm of Watson, Stouffer, Davis & Gearheart, attorneys at law, Columbus, Ohio, who had corresponded concerning a claim they had against said company for legal services, but had not filed formal proof of same, did so file with the receiver formal proof of claim upon the twenty-fourth day of April, 1915, but through inadvertence the proof of claim was not filed herein. The receiver is of the opinion that this said claim is a valid claim against the Superior Portland Cement Company and should be filed and allowed at this time and ordered paid as an additional claim to those, the payment of which are provided for in the decree heretofore entered.

Guy W. Mallon, Receiver.

**Form No. 48****Application by Receiver for Confirmation of Accounts  
and Discharge**

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF OHIO, WESTERN DIVISION. No. 21. IN EQUITY

Frances H. Williamson, Plaintiff,

v.

Justus Collins, Eugene Zimmerman, George H. Collins, and  
the Superior Portland Cement Company, a Corporation,  
Defendants.

Now comes Guy W. Mallon, receiver herein, and shows to the court that he has done all the things as ordered by the court in the decree heretofore filed in this cause, and has filed his final account showing all of the receipts and disbursements of said receivership; that his books of account as receiver have been audited by Ernst & Ernst, certified public accountants, and that his accounts have been found to be correct.

He has no knowledge of unpaid claims or charges of any kind whatsoever other than accrued taxes not yet due or payable.

Wherefore, the receiver prays the court that his account as filed be approved and confirmed and that he be discharged as receiver of the Superior Portland Cement Company.

## FORMS OF PETITIONS BY RECEIVER

**Form No. 49****Petition of Receiver for Further Instructions**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. IN EQUITY. No. 41  
CONSOLIDATED CAUSE

Bankers Trust Company, Complainant,  
v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

*Petition of Receivers for Further Instructions with Respect to  
Operation of The Cincinnati, Findlay & Fort Wayne  
Railway Company*

Judson Harmon and Rufus B. Smith, receivers herein, respectfully show to the court that by the terms of the contract between the Receivers and F. N. B. Close, Sidney C. Borg, Henry F. Whitcomb and Albert H. Wiggin, as a committee for the protection of the first mortgage, four per cent., twenty-year gold bonds of The Cincinnati, Findlay & Fort Wayne Railway Company, which was approved by this court by order entered herein December 9, 1916, it was agreed that the receivers should continue their present operation of the property of The Cincinnati, Findlay & Fort Wayne Railway Company until the first day of February, 1917, and provided further that upon the first day of February, 1917, unless sooner requested in writing by the committee, the receivers should turn over to the trustees under said mortgage, and the supplement thereto, or their successors or the holders of the first mortgage bonds of The Cincinnati, Findlay & Fort Wayne Railway Company, or their representatives or successors, the said railroad and appurtenances then in existence and in the possession of the receivers (subject to existing liens thereon), whereupon the receivers should be relieved of all future operation of said line. This court by its order herein of December

9, 1916, approving said contract, ordered and directed said receivers to turn over the property of said Cincinnati, Findlay & Fort Wayne Railway Company at the time and in the manner as in said contract provided.

Your petitioners aver that they are anxious and ready to carry out said contract and said order of this court, and surrender possession of said property as in each provided, and they have so notified said committee for the bondholders and the trustees under said mortgage. They have been informed that neither the bondholders nor the trustees have completed their arrangements for taking over the operation of the property, and your petitioners have been requested to continue.

Wherefore your petitioners request that they may receive the further instructions of this court in reference to the further operation of said line of railroad of The Cincinnati, Findlay & Fort Wayne Railway Company and for proper relief.

Judson Harmon,  
Rufus B. Smith,

Receivers of The Cincinnati, Hamilton & Dayton  
Railway Company.

Morison R. Waite, Solicitor to said Petitioners.

State of Ohio, Hamilton County, ss.:

Judson Harmon, being first duty sworn, deposes and says that he is one of the receivers of The Cincinnati, Hamilton & Dayton Railway Company, and he believes the allegations of their foregoing petition to be true.

Judson Harmon.

Sworn to before me and subscribed in my presence this  
30th day of January, 1917.

[SEAL]

Clarence E. Barton, Notary Public.



**Form No. 50****Petition of Receiver for Order of Court for Presentation  
of Claims**

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF OHIO, WESTERN DIVISION. IN EQUITY. No. 41

Bankers Trust Company, Complainant,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

Your petitioners, Judson Harmon and Rufus B. Smith, heretofore appointed receivers in this cause, respectfully show that by an order entered by this court in the causes entitled Central Trust Company of New York and Augustus L. Mason, as trustees, v. Cincinnati, Indianapolis & Western Railway Company, et al., and The Equitable Trust Company of New York and Elias J. Jacoby, as Trustees, v. Cincinnati, Indianapolis & Western Railway Company, et al., it was provided that all claims for priority over the mortgages foreclosed in said proceedings from the proceeds of sale of the property of said Cincinnati, Indianapolis & Western Railway Company must be filed within four (4) months from the date of the first publication made by the master commissioner appointed therein, Frank O. Suire, Esquire, of the notice requiring presentation of claims, and that the first publication of such notice was made by said master commissioner upon the eighteenth day of December, 1915. Your petitioners will have for presentation a claim against the proceeds of sale to be filed in accordance with said order, for their expenses in the operation of the property of said Cincinnati, Indianapolis & Western Railway Company, the exact amount of which can not be ascertained unless bills and claims of their creditors against them be promptly presented to your petitioners, and your petitioners will require about six weeks' time within which to examine, audit and correct said claims as presented before the time within which they are required to present

their claim against the proceeds of sale of said Cincinnati, Indianapolis & Western Railway Company.

Wherefore your petitioners pray that an order may be entered in this cause requiring all persons having claims against them as receivers of The Cincinnati, Hamilton & Dayton Railway Company, growing out of or in any way connected with their operation of the property of The Cincinnati, Indianapolis & Western Railway Company, to present said claims to your petitioners on or before the first day of March, 1916, under penalty of having claims not presented disallowed as claims against your petitioners, and that they be authorized to make publication of said order of court in newspapers of general circulation published in the cities of Cincinnati, Ohio, Indianapolis, Ind., Springfield, Ill., New York, N. Y., and Chicago, Ill., once a week for two (2) consecutive weeks.

Judson Harmon,  
Rufus B. Smith,

Receivers of The Cincinnati, Hamilton & Dayton  
Railway Company.

Morison R. Waite, Solicitor for said Receivers.

State of Ohio, Hamilton County, ss.:

Judson Harmon, being first duly sworn, deposes and says that he is one of the receivers named in the foregoing petition, and that he believes the allegations thereof are true.

Judson Harmon.

Sworn to before me and subscribed in my presence this  
31st day of December, 1915.

[SEAL] Walter K. Noe, Notary Public, Hamilton County, O.

**Form No. 51****Petition of Receivers Respecting Claims**

IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT  
OF OHIO, WESTERN DIVISION. IN EQUITY. No. 41

Bankers Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

*Petition of Receivers Respecting Claims*

Judson Harmon and Rufus B. Smith, receivers herein, respectfully show to the court that under the order appointing them they are required with all convenient speed to ascertain and report the state, condition and circumstances of the property and of the debts and liabilities charged thereon or owing by said Railway Company, and of the nature of the security as to each indebtedness, and they are authorized in their discretion to pay certain of the operating expenses and other indebtedness incurred by the Railway Company prior to their appointment as receivers, but that no provision has been made by the court for the presentation to them of claims against the Railway Company, and that it is desirable that an order be made requiring the presentation of all such claims within a time to be fixed by the court, to enable your petitioners as receivers to perform the duties entrusted to them, under the order of their appointment.

Wherefore your petitioners pray that the court may order all persons having claims against the Railway Company to file such claims, duly verified, with your petitioners, and that all those having claims which are asserted to have priority over the mortgage to the complainant or to have liens upon any of the property of the defendant, or other security, will set up the nature of such priority liens or security to which they

deem themselves entitled, under penalty of thereafter having said claims disallowed in the discretion of the court.

Rufus B. Smith,  
Judson Harmon,  
Receivers of The Cincinnati, Hamilton & Dayton  
Railway Company.  
Morison R. Waite, Solicitor for Receivers.

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## FORMS OF ORDERS AND ENTRIES

### Form No. 52

#### Order Defining Powers of Receiver and Granting Additional Powers

(Entered by Judge Hollister, January 21, 1914)

This cause came on this day to be heard upon the application of Guy W. Mallon, receiver herein, for a more specific definition of the powers heretofore conferred upon him as such receiver and for an order granting him such further powers as may be necessary to enable him to operate the business of the Superior Portland Cement Company actively and to meet the competition of other persons and corporations engaged in the same line of business, due notice of the time and place of the hearing of said application having been given to all parties in interest and a copy of said application, together with a statement by the receiver of the necessity for such order, having been mailed to each creditor and to each bondholder of said corporation; and upon the evidence, and was submitted to the court.

The court, being fully advised in the premises, on consideration thereof finds that it is for the best interests of the creditors, the bondholders and the stockholders of said the Superior Portland Cement Company that said application be granted.

It is therefore ordered, adjudged and decreed that said Guy W. Mallon, receiver herein, carrying out the original order of this court to preserve the assets of the corporation, be authorized to defend any actions pending or which may be brought seeking to establish claims, liens or demands against the said company or its property, and to prosecute or continue any action already brought against any corporation or party for the recovery of any money or property due to the said the Superior Portland Cement Company; and in the collection of accounts due said company be authorized to enter suit for the same against any and all debtors who fail to make payment after proper demand therefor has been made.

It is further ordered, adjudged and decreed that said Guy W. Mallon, receiver herein, in addition to the powers heretofore granted him, be authorized

To make necessary repairs to the mill, not to exceed \$10,000.

To employ not to exceed three salesmen at salaries heretofore paid.

To erect a clinker platform and conveyor, if the same will, in his opinion, add materially to the efficiency of the plant.

To announce to former customers and generally to the trade, that the manufacture of cement will be continued without interruption during the year 1914.

To enter into contracts and to extend credit to purchasers in accordance with the former custom of the business and the exigencies of the trade in general.

To meet competition, to manufacture, to seek business both from old customers and from new customers, and in general to operate the business as fully as the corporation operated the same, and in the manner best calculated, in his opinion, to fully protect the trade and goodwill of the company, to the end that the business of the company may be preserved as well as its assets, and that it may be returned to the stockholders as a going concern.

And in order to effectually carry out the foregoing, to make payment of the salaries and wages of the employes of said

company, to purchase and pay for needed materials and supplies, to settle accounts incurred in the operation of the defendant company, and to make payment of all expenses incurred in the operation of said business out of any funds coming into his hands as such receiver, subject to the prior payment of the money heretofore borrowed by the receiver from the Fifth-Third National Bank of Cincinnati, to all of which Justus Collins, George Collins, Eugene Zimmerman and the attorneys of record for the Superior Portland Cement Company excepts and this order is made without prejudice to any right of any creditor to interfere to contest the validity of the bond issue.

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### Form No. 53 .

#### Order Authorizing Payment of Appraisers' Fees

##### *Order*

It appearing to the court that Charles J. Reilly, David C. McKitterick and Louis R. King, heretofore appointed appraisers in this cause, have made an appraisement of the property and assets of the Superior Portland Cement Company and the same has been duly filed, and that they were constantly occupied for the space of six days in making said appraisement, the receiver herein is hereby authorized to pay each of said appraisers for their services so rendered the sum of twenty-five dollars (\$25) per day and their expenses.

He is further authorized to pay Charles J. Reilly, consulting engineer, seventy-five dollars (\$75) for his report upon the condition and needs of the plant.

**Form No. 54****Order Appointing Appraisers**

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON  
PLEAS. No. 146490 .

Samuel P. Suit, Plaintiff,  
v.

The Zapf Wagon & Lumber Company, Defendant.

***Order Appointing Appraisers***

This proceeding came on for hearing on the application of the receiver herein, Edward O. Brater, for instructions.

It appearing to the court that it is to the interest of said trust that, in addition to the inventory of all assets coming into the custody of said receiver, heretofore ordered made, an appraisement of said assets also be made, and ———, ———, ———, freeholders and residents of Hamilton County, Ohio, are hereby appointed appraisers.

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**Form No. 55****Order with Respect to Claims**

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN  
DISTRICT OF OHIO, WESTERN DIVISION. IN EQUITY. No. 41

Bankers Trust Company, Plaintiff,  
v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

***Order with Respect to Claims***

This cause coming on to be heard upon the petition of receivers filed herein, on consideration thereof and after due deliberation for good cause shown, it is ordered that:

All persons, firms or corporations having claims or demands against the defendant, the Cincinnati, Hamilton & Dayton Railway Company, other than those secured by mortgage or collateral sale duly filed or recorded, are required, on or

before the first day of January, 1915, under penalty of hereafter having said claims disallowed in the discretion of the court, to file the same with Judson Harmon and Rufus B. Smith, receivers herein, which said claims or demands shall be supported by affidavit and shall set out the amount and nature of any security or lien held by the claimant or to which the claimant is entitled, and also any claim to preference in payment from the assets in the hands of the receivers or the earnings therefrom in priority to the bonds secured by the mortgage to the plaintiff, Bankers Trust Company, of New York, bearing date July 1, 1909, and known as defendant's first and refunding mortgage, or to any other creditors of the defendant.

It is further ordered that said receivers shall, as soon as conveniently they can, after the first day of January, 1915, report a week for four (4) consecutive calendar weeks in a newspaper published and of general circulation in Cincinnati, Ohio, and in a newspaper published and of general circulation in New York, State of New York, and shall also give not less than thirty (30) days' notice by mail to all creditors and claimants of whose names and addresses they may be informed.

It is ordered that said receivers shall, as soon as conveniently they can, after the first day of January, 1915, report to the court a list of all such claims as may have been presented to them and which, at the time of making said report, shall not have been paid under the authority heretofore conferred upon them, and shall file with said report all papers filed with them in connection with said unpaid claims.

(Enter Hollister, Judge).

NOTE.—The appointment of a receiver not only affects the payment of claims against the defendant, but also affects the carrying out of contracts between the defendant and third parties which are still executory in whole or in part. It is of just as much importance that the parties to such contract be notified of the receivership as that those having claims against the defendant be notified. The failure of the receiver to carry out an executory contract of the defendant may, it is true, ripen into a claim against such defendant, yet the carrying out of the contract by the receiver may bar a claim for failure to carry out. It is, therefore, important that all parties to executory contracts with the defendant at the time of the receivership be requested to notify the receiver of such contracts.



**Form No. 56****Order Authorizing Receiver to Pay Taxes**

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON  
PLEAS. No. 146490

Samuel P. Suit, Plaintiff,  
v.

The Zapf Wagon & Lumber Company, Defendant.

***Order Authorizing Receiver to Pay Taxes***

This proceeding came on for hearing on application of the receiver herein for instructions. It appearing to the court that it is to the interest of said trust that the taxes on the personal property and real estate of the Zapf Wagon & Lumber Company, now amounting to \$51.23, be paid on or before December 20, 1910.

It is therefore ordered that the said receiver, Edward O. Brater, pay out of the funds in his hand said taxes.

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**Form No. 57****Order Authorizing Receiver to Repair Property**

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON  
PLEAS. No. 146490

Samuel P. Suit, Plaintiff,  
v.

The Zapf Wagon & Lumber Company, Defendant.

***Order Authorizing Receiver to Repair Property***

This day this cause came on to be heard upon the application of Edward O. Brater, receiver herein, for an order authorizing him to spend an amount not exceeding seventy-five (\$75) dollars to repair the roof and shore up the second floor of the shop belonging to the defendant, the Zapf Wagon & Lumber Company, the same being necessary for the preser-

vation of the building and for the best interests of the creditors.

It is therefore ordered that Edward O. Brater, receiver, out of the money now in his hands, pay, for the purposes herein set forth, an amount not exceeding seventy-five (\$75) dollars.

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### Form No. 58

#### Order with Respect to Claims Against Receiver's Operation

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN  
DISTRICT OF OHIO, WESTERN DIVISION. IN EQUITY. No. 41

Bankers Trust Company, Complainant,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

#### *Order*

This cause coming on to be heard on the petition of Judson Harmon and Rufus B. Smith, receivers herein, filed the thirty-first day of December, 1915, and having been argued by counsel for the receivers, on consideration thereof and the evidence in support thereof, the court finds that the prayer of said petition should be granted, and it is hereby ordered:

That all persons, firms, associations or corporations having claims or demands of any nature or description against Judson Harmon and Rufus B. Smith, receivers of the Cincinnati, Hamilton & Dayton Railway Company, growing out of or connected with the operation of said receivers of the railroad of the Cincinnati, Indianapolis & Western Railway Company, extending from the city of Hamilton, Butler County, Ohio, through the city of Indianapolis, Marion County, Ind., to the city of Springfield, Sangamon County, Ill., with a branch line from Sidell, Vermillion County, Ill., to Olney, Richland County, Ill., be and they are hereby required

to present their said claims and demands in writing to said Judson Harmon and Rufus B. Smith, receivers of the Cincinnati, Hamilton & Dayton Railway Company, on or before the first day of March, 1916, under penalty of having claims not so presented disallowed, and said receivers are directed to make publication of this order in newspapers of general circulation published in the cities of Cincinnati, Ohio, Indianapolis, Ind., Springfield, Ill., New York, N. Y., and Chicago, Ill., once a week for two (2) successive weeks.

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### Form No. 59

#### Order Ordering Property Reinsured

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON  
PLEAS. No. 146490

Samuel P. Suit, Plaintiff,

v.

The Zapf Wagon & Lumber Company, Defendant.

#### *Order Ordering Property Reinsured*

This proceeding came on for hearing on the application of Edward O. Brater, receiver herein, for instructions.

It appearing to the court that the insurance on the frame building now occupied by the Zapf Wagon & Lumber Company expires December 13, 1910, and that it is to the interest of said trust that the frame building and contents covered by said trust be properly insured.

The receiver is therefore hereby ordered to reinsure said property and to keep the same properly insured during the continuance of his trust.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

IN EQUITY. No. 41

Central Trust Company of New York, as Trustees under General Mortgage of The Cincinnati, Hamilton and Dayton Railway Company, Plaintiff,  
against  
The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

### Order Extending Receivership

On this day the motion of Central Trust Company of New York, plaintiff in the above entitled case No. 107, for the appointment of a receiver in the foreclosure suit of said Company against the Cincinnati, Hamilton & Dayton Railway Company, coming on to be heard, on inspection of the record and after full consideration of said motion, and it appearing that the defendant Railway Company was the defendant in the cause now pending in equity No. 41 in this court, wherein Bankers Trust Company is plaintiff and the Cincinnati, Hamilton & Dayton Railway Company is defendant, and inasmuch as Judson Harmon and Rufus B. Smith were heretofore by an order of this court dated July 2, 1914, appointed receivers of all and singular the railroads, lands, property, assets, rights and franchises of the Cincinnati, Hamilton & Dayton Railway Company in said order mentioned, including the property subject to the lien of the general mortgage made by the Cincinnati, Hamilton & Dayton Railway Company by this court in the cause of Bankers Trust Company, plaintiff, against the

Cincinnati, Hamilton & Dayton Railway Company, defendant, in equity No. 41, it was thereupon

Ordered that said receivership should be and the same is now hereby specifically extended to all property covered by and described in said general mortgage made by the Cincinnati, Hamilton & Dayton Railway Company, dated July 1, 1909, so that said receivers will become the receivers in said cause Central Trust Company of New York, as Trustee, plaintiff, v. the Cincinnati, Hamilton & Dayton Railway Company, defendant, No. 107 on the equity docket of this court, of all the railroads, property, assets and franchises subject to the lien of said general mortgage dated July 1, 1909, of the Cincinnati, Hamilton & Dayton Railway Company, and vested with all the powers conferred upon them by the said order of their appointment in said cause of the Bankers Trust Company, plaintiff, against the Cincinnati, Hamilton & Dayton Railway Company, defendant, in equity No. 41; and

It is further ordered by the court that the bonds heretofore given by said receivers in the cause entitled Bankers Trust Company, plaintiff, against the Cincinnati, Hamilton & Dayton Railway Company, defendant, in equity No. 41, shall extend to and cover the liability of said receivers in the cause entitled Central Trust Company of New York, as Trustee under general mortgage of the Cincinnati, Hamilton & Dayton Railway Company, plaintiff, against the Cincinnati, Hamilton & Dayton Railway Company, defendant, in equity No. 107, to all intents and purposes the same as if said bonds had been filed in said last named cause, upon the written consent of the surety in said bonds that they shall so apply, or, failing to obtain said written consent of said surety, the receivers shall file a new bond in said last named cause for the sum of \$10,000 and upon the same conditions as the bonds heretofore filed.

Hollister, United States District Judge.

Dated August 14, 1910.

Bankers Trust Company, plaintiff in the above entitled cause No. 41, hereby consents to the making of the above and foregoing order.

White & Case,  
Maxwell & Ramsey,  
Solicitors for Bankers Trust Company.

The Cincinnati, Hamilton & Dayton Railway Company, defendant in the above entitled cases No. 41 and No. 107, hereby consents to the making of the above and foregoing order.

Morison R. Waite,  
Solicitor for the Cincinnati, Hamilton & Dayton  
Railway Company.

Judson Harmon and Rufus B. Smith, receivers of the Cincinnati, Hamilton & Dayton Railway Company, hereby consent to the making of the above and foregoing order.

Morison R. Waite, Solicitor for said Receivers.

**Form No. 61****Order Extending Receivership (Another Form)**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

Bankers Trust Company, Plaintiff,  
against  
The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

IN EQUITY. No. 41

United States Mortgage & Trust Company, as Trustee under  
the First Mortgage of the Cincinnati, Dayton & Ironton  
Railroad Company, Plaintiff,  
against  
The Cincinnati, Hamilton & Dayton Railway Company, Bank-  
ers Trust and Central Trust Company of New York,  
Defendants.

IN EQUITY. No. 105

***Order Extending Receivership***

On this day the motion of the United States Mortgage & Trust Company, plaintiff in the above entitled cause No. 105 for the appointment of a receiver in the foreclosure suit of said Company against the Cincinnati, Hamilton & Dayton Railway Company, Bankers Trust Company and Central Trust Company of New York, coming on to be heard, on inspection of the record and after full consideration of said motion and it appearing that the defendant Railway Company was the defendant in the cause now pending in equity No. 41 in this court, wherein Bankers Trust Company is plaintiff and the Cincinnati, Hamilton & Dayton Railway Company is defendant, and inasmuch as Judson Harmon and Rufus B. Smith were heretofore by an order of this court, dated July 2, 1914, appointed receivers of all and singular the railroads, lands, property, assets, rights and franchises of the Cincinnati, Hamilton & Dayton Railway Company in said order mentioned, including this property subject to the lien of the first mortgage made by the Cincinnati, Dayton & Ironton Railroad

Company by this court in the cause of Bankers Trust Company, plaintiff, against the Cincinnati, Hamilton & Dayton Railway Company, defendant, in equity No. 41, it was thereupon

Ordered that said receivership be and the same is now hereby specifically extended to all property covered by and described in said first mortgage made by the Cincinnati, Dayton & Iron-ton Railroad Company, dated May 1, 1891, so that said receivers will become the receivers in said cause United States Mortgage & Trust Company, as Trustee, plaintiff, against the Cincinnati, Hamilton & Dayton Railway Company, Bankers Trust Company and Central Trust Company of New York, defendants No. 105 on the equity docket of this court, of all the railroads, property, assets and franchises subject to the lien of said first mortgage dated May 1, 1891, of the Cincinnati, Dayton & Iron-ton Railway Company and vested with all the powers conferred upon them by the said order of their appointment in said cause of the Bankers Trust Company, plaintiff, against the Cincinnati, Hamilton & Dayton Railway Company, defendant, in equity No. 41; and

It is further ordered by the court that the bonds heretofore given by said receivers in the cause entitled Bankers Trust Company, plaintiff, against the Cincinnati, Hamilton & Dayton Railway Company, defendant, in equity No. 41 shall extend to and cover the liability of said receivers in the cause entitled United States Mortgage & Trust Company, as Trustee under the first mortgage of the Cincinnati, Dayton & Iron-ton Railroad Company, plaintiff, against the Cincinnati, Hamilton and Dayton Railway Company, Bankers Trust Company and Central Trust Company of New York, defendants, in equity No. 105, to all intents and purposes the same as if said bonds had been filed in said last named cause, upon the written consent of the surety in said bonds that they shall so apply, or, failing to obtain said written consent of said surety, the receivers shall file a new bond in said last named



cause for the sum of \$10,000 and upon the same conditions as the bonds heretofore filed.

Hollister, United States District Judge.

Dated August 14, 1916.

Bankers Trust Company, plaintiff in the above entitled cause No. 41 and defendant in the above entitled cause No. 105, hereby consents to the making of the above and foregoing order.

White & Case,

Maxwell & Ramsey,

Solicitors for Bankers Trust Company.

Central Trust Company of New York, defendant in the above entitled cause No. 105, hereby consents to the making of the above and foregoing order.

Joline, Larkin & Rathbone,

Ben B. Nelson,

Solicitors for Central Trust Company of New York.

The Cincinnati, Hamilton & Dayton Railway Company, defendant in the above entitled causes No. 41 and No. 105, hereby consents to the making of the above and foregoing order.

Morison R. Waite,

Solicitor for the Cincinnati, Hamilton & Dayton Railway Company.

Judson Harmon and Rufus B. Smith, receivers of the Cincinnati, Hamilton & Dayton Railway Company, hereby consent to the making of the above and foregoing order.

Morison R. Waite, Solicitor for said Receivers.

**Form No. 62****Order Consolidating Causes**

**DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT  
OF OHIO, WESTERN DIVISION**

**Bankers Trust Company, Plaintiff,**

**v.**

**The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.**

**IN EQUITY. No. 41**

**United States Mortgage & Trust Company, as Trustee under  
the First Mortgage of the Cincinnati, Dayton & Ironton  
Railroad Company, Plaintiff,**

**v.**

**The Cincinnati, Hamilton & Dayton Railway Company, Bank-  
ers Trust Company and Central Trust Company of  
New York, Defendants.**

**IN EQUITY. No. 105**

**Central Trust Company of New York, as Trustee under Gen-  
eral Mortgage of the Cincinnati, Hamilton & Dayton  
Railway Company, Plaintiff,**

**v.**

**The Cincinnati, Hamilton and Dayton Railway Company,  
Defendant.**

**IN EQUITY. No. 107**

***Order Consolidating Causes***

On this fourteenth day of August, 1916, the motion of Bankers Trust Company, complainant in the first of the above entitled causes, for the consolidation of the above entitled three causes, came on to be heard; and on inspection of the record and the complainants and defendants in all of said three causes appearing by their solicitors and consenting, it is thereupon

Ordered that said three causes be and hereby they are consolidated into one cause and that they hereafter proceed as one cause under the title Bankers Trust Company v. the Cincinnati, Hamilton & Dayton Railway Company, in equity No. 41, Consolidated Cause.

Hollister, United States District Judge.

Dated August 14, 1916.

Bankers Trust Company, plaintiff in the above entitled cause No. 41 and a defendant in No. 105, hereby consents to the making of the above and foregoing order.

White & Case,

Maxwell & Ramsey,

Solicitors for Bankers Trust Company.

The Cincinnati, Hamilton & Dayton Railway Company, defendant in all of the above entitled causes, hereby consents to the making of the above and foregoing order.

Morison R. Waite,

Solicitors for the Cincinnati, Hamilton and Dayton  
Railway Company.

Central Trust Company of New York, complainant in above entitled cause No. 107 and defendant in No. 105, hereby consents to the making of the above and foregoing order.

Joline, Larkin & Rathbone,

Ben B. V. Elson,

Solicitors for Central Trust Company of New York.

United States Mortgage & Trust Company, complainant in above entitled cause No. 105 hereby consents to the making of the above and foregoing order.

Harmon, Patterson, Eagle, Greenough & Day,  
and Ernst, Cassatt & Cottle,

Solicitors for United States Mortgage & Trust Company.

Judson Harmon and Rufus B. Smith, receivers of the Cincinnati, Hamilton & Dayton Railway Company, hereby consent to the making of the above and foregoing order.

Morison R. Waite, Solicitor for said Receivers.

**Form No. 63****Order Authorizing Receiver to Employ Counsel**

(Form under Civil Code Procedure)

John C. Hooven, Plaintiff,

v.

The Cincinnati, Lawrenceburg & Aurora Electric Street  
Railway Company, Defendant.*Entry Authorizing Receiver to Employ Counsel*

This day this cause came on to be heard on application of ———, receiver herein, for authority to employ counsel to advise and represent him in all legal proceedings and matters arising in the management and operation by said receiver of defendant company's railroad, and the court being fully advised with the consent of all parties, hereby appoint ——— as counsel and ——— as attorney for the said receiver, and said receiver is authorized to pay as total compensation to both counsel and attorney for all such legal services to be rendered by them the sum of ——— per month beginning.

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**Form No. 64****Entry Granting Motion to Reclaim Property in Possession of  
Receivers**IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN  
DISTRICT OF OHIO, WESTERN DIVISION. IN EQUITY. No. 41

Bankers Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.*Entry Granting Motion to Reclaim Property in Possession  
of Receivers*

This cause comes on to be heard on the motion of E. Blackwell, administrator of the estate of James Brown, deceased, for an order to require the receivers herein to turn

over a sum of money, to wit: six hundred and eight and 40/100 (\$608.40) dollars to said administrator, directed to said receivers and on the evidence and the argument of counsel, and was submitted to the court, on consideration whereof the court finds that before Judson Harmon and Rufus B. Smith were appointed as receivers of defendant company herein, said E. Blackwell, as administrator aforesaid, became entitled to a sum of money, to wit: six hundred and eight and 40/100 (\$608.40) dollars then in the hands of the defendant company, and that said company was holding said sum of money in trust at the time said Judson Harmon and Rufus B. Smith were appointed receivers for defendant company, and said sum did not pass to said receivers or come into their possession as property of defendant company, but as the property of said E. Blackwell, administrator aforesaid.

It is therefore ordered and decreed that the said Judson Harmon and Rufus B. Smith, as receivers herein, deliver and surrender to the said E. Blackwell, as administrator aforesaid, or his attorney, Charles O. Rose, the said sum of money, six hundred and eight and 40/100 (\$608.40) dollars, upon delivery to said receivers of a proper release executed by said administrator. To all of which said receivers, by their counsel, except.

**Form No. 65****Order Approving Bonds of Receivers**

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.

IN EQUITY. No. 41

Bankers Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

*Order Approving Bonds of Receivers*

This day came Judson Harmon and Rufus B. Smith, heretofore appointed receivers herein, and each accepted said appointment and was duly sworn and also presented his bond in the sum of fifty thousand dollars (\$50,000), each with United States Fidelity & Guaranty Company as surety, each of which is hereby approved and ordered filed. Said receivers are, therefore, found to be duly qualified.

Enter:

Howard C. Hollister, District Judge.

July 2, 1914,

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**Form No. 66****Entry Approving Bonds of Receivers (Another Form)***Entry*

Guy W. Mallon, having filed his bond as receiver herein in the sum of \$10,000, with American Surety Company, New York, as surety, and the court having examined said bond, does hereby approve the same; and it is ordered by the court, upon the suggestion of said receiver, that Charles J. Reilly, David C. McKitterick and L. R. King, three suitable, disinterested persons, be and they are hereby appointed appraisers to appraise the property and assets of the said the Superior

Portland Cement Company, and to report their appraisal to the court, said appraisal to be made as soon as may be; said appraisers to be first duly sworn.

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## Form No. 67

### Order Allowing Claim

Arthur W. Rickman, Complainant,

v.

Alfred G. Rickman, Peter L. Rickman, William D. Rickman,  
Defendants.

In the matter of the claim of Thomas M. Robinson.

At a session of said court held at the courthouse in the City of Kalamazoo, said county, on March 17, 1913; present, Honorable Frank E. Knappen, Circuit Judge. This cause having been brought on to be heard upon the objections of the receiver therein to the allowance of dividends to said claimant, and the proofs submitted to the court in support of and against the allowance of dividends to said claimant, and after hearing the argument of counsel thereon, and the court finding in relation thereto that said claimant is entitled to share in any dividends declared, without any deductions being made for payments received by him under a judgment against said complainant and defendants, and Oneida County, Wisconsin, jointly.

Therefore, on motion of Floyd A. Wilson, of counsel for said claimant, it is ordered, adjudged and decreed, and this court by virtue of the authority therein vested, doth order, adjudge and decree as follows:

1. That the amount of the claim of said Thomas M. Robinson herein is fixed and determined by this court in the sum of \$2,021.16, with interest thereon at the rate of five per cent. per annum on the sum of \$1,055.84 from May 1, 1910, and on the sum of \$465.32 from March 1, 1910, and

with interest on said unpaid note of \$500 at the rate specified in said note from the date thereof.

2. That the Michigan Trust Company, receiver, heretofore appointed in this cause, shall, from the funds in its possession as such receiver, pay to said claimant, Thomas M. Robinson, a dividend on his claim of equal percentage to that paid other claimants herein whose claims were not contested.

3. That the said receiver shall, from the funds now or hereafter coming into his possession as such receiver, pay to said claimant, Thomas M. Robinson, a dividend on the interest due on his claim equal in percentage to that paid under the second paragraph herein.

4. That the said receiver shall, from the funds in its possession or hereafter coming into its possession as such receiver, pay to said claimant, Thomas M. Robinson, a solicitor fee of \$25 and costs in the sum of \$10.

Frank E. Knappen, Circuit Judge.

Countersigned: Edward F. Curtenius, Register.

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## Form No. 68

### Order Granting Leave to Mortgagee to Foreclose

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION. IN  
EQUITY No. 41. CONSOLIDATED CAUSE No. 41

Bankers Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

### Order

This cause came on to be heard upon the petition of United States Mortgage and Trust Company as trustee under the first mortgage of the Cincinnati, Dayton & Ironton Railroad Company for an order granting leave to said petitioner



to file its bill of complaint for the foreclosure of said mortgage, and notice having been duly given to plaintiff and defendant by their counsel, it is ordered that the prayer of said petition be and the same is hereby granted and leave is hereby given to said petitioner to file its bill of complaint in this court for the foreclosure of said mortgage and for such other and further relief in the premises as the nature and circumstances of the cause may require.

Hollister, Judge.

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### Form No. 69

#### Order Confirming Accounts and Discharging Receiver

A B, Plaintiff,  
v.  
C D, Defendant.

#### *Entry Confirming Accounts of Receiver and Discharging Receiver*

This cause came on to be heard on the motion to confirm the accounts of ———, receiver heretofore filed herein and the court finds said accounts correct and that said receiver has fully obeyed the orders of the court to him issued and has duly accounted for and paid over all moneys coming into his hands as such receiver.

It is now, therefore, ordered that all acts and things done by said receiver, as well as his accounts filed herein be and they hereby are approved and confirmed and the said ——— is discharged from further duties, liabilities and responsibilities as receiver herein and his bond heretofore given in this cause is released and discharged from further liability herein.

## SUNDRY RECEIVERSHIP FORMS

**Form No. 70****Receiver's Oath**

(Form under Chancery Practice)

A B, Plaintiff,

v.

C D, Defendant.

*Oath of Receiver*

I, ———, having heretofore been appointed ——— in the above entitled cause, do solemnly swear that I will faithfully and impartially perform my duties as such ———, agreeable to the order of the court, to the best of my ability and understanding. So help me God.

Sworn to before me and signed in my presence this ——— day of ———, A. D. 19—.

**Form No. 71****Receiver's Bond \***

Know all men by these presents, That George C. Hitchcock, receiver of Peter & Company, a corporation, and W. H. Peter and ——— Peter, his wife, and F. S. Thorp and Eva J. Thorp, his wife, are held and firmly bound unto the defendants and the State of Washington in the sum of five thousand dollars (\$5,000) lawful money of the United States of America to be paid to the said defendants and the State of Washington, its successors and executors, administrators or assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly, severally and

\* Taken from *Williams v. Hitchcock* (1915), 86 Wash. 536 at 538, 150 Pac. 1144.

firmly by these presents. Sealed with our seals and dated February 28, 1908.

The conditions of the above obligation is such that if the above bounden George C. Hitchcock, as receiver of W. H. Peter & Company, a corporation, shall well and faithfully perform the duties of his said office and perform all orders of the court concerning said receivership then the above obligation to be void; otherwise to remain in full force and virtue.

In testimony whereof we have hereunto set our hands and seals this February 28, A. D. 1908.

[SEAL]      George C. Hitchcock, W. H. Peter, F. S. Thorp,  
Eva J. Thorp.

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## Form No. 72

### Receiver's Bond (Another Form)

Know all men by these presents: That we ———, as principal, and ———, as surety, are held and firmly bound unto the State of ——— (or unto other party to the cause if the court so directs) in the penal sum of \$——— for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

The condition of the above obligation is that whereas the above named ——— was by ——— judge of ——— court duly appointed receiver in case No. ——— in ——— court, State of Ohio, in which ——— is plaintiff and ——— is defendant.

Now, therefore, if the said ——— shall promptly take charge of and shall well and faithfully account for all the

property of which he has been appointed receiver (and shall make and file proper inventories and reports and pay over or account for all moneys that may or should come into his hands and obey all orders of the court to him addressed and otherwise faithfully discharge all the duties of his trust) then this obligation is to be void and of no effect, otherwise to be and remain in full force and effect.

Witness our hands this \_\_\_\_\_.

Witness: \_\_\_\_\_ Principal,  
 \_\_\_\_\_ Surety.

NOTE.—Sample form to be substituted between the above brackets (shall faithfully discharge the duties of receiver in the action and obey the orders of the court therein.)

## Form No. 73

### Oath of Sureties Attached to Bond

*Oath of Sureties Endorsed upon or Attached to the Foregoing Undertaking, viz.: Form No. 72*

State of \_\_\_\_\_, County of \_\_\_\_\_, ss..

\_\_\_\_\_ and \_\_\_\_\_, whose names are subscribed as sureties to the above undertaking, being severally duly sworn, each for himself says, that he is a resident and freeholder with the said County of \_\_\_\_\_, and that he is worth the sum in said undertaking specified as the penalty thereof over and above all his debts and liabilities, exclusive of property except for execution.

\_\_\_\_\_, \_\_\_\_\_.

NOTE—This oath is not absolutely necessary, nor is it generally prescribed by statute but it would seem only a matter of precaution for the judge to qualify the sureties in some such manner.

**Form No. 74****Consent of Surety on Receiver's Bond to Extension of  
Receivership and Consolidation of Causes**

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN  
DISTRICT OF OHIO, WESTERN DIVISION

Bankers Trust Company, Plaintiff,

v.

Cincinnati, Hamilton & Dayton Railway Company, Defendant.  
IN EQUITY. No. 41

United States Mortgage & Trust Company, as Trustee under  
the Mortgage of the Cincinnati, Dayton & Ironton  
Railway Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company et al,  
Defendants.

IN EQUITY. No. 105

Central Trust Company of New York, as Trustee under  
General Mortgage of the Cincinnati, Hamilton & Dayton  
Railway Company, Plaintiff,

v.

Cincinnati, Hamilton & Dayton Railway Company, Defendant.  
IN EQUITY. No. 107

Bankers Trust Company, Plaintiff,

v.

Cincinnati, Hamilton & Dayton Railway Company, Defendant.  
IN EQUITY. No. 41. CONSOLIDATED CAUSE

*Consent of Surety of Receiver's Bond to Extension of Re-  
ceivership and Consolidation of Causes*

Whereas in the first above entitled cause Judson Harmon and Rufus B. Smith were on July 2, 1914, appointed receivers of the business and assets of the defendant, the Cincinnati, Hamilton & Dayton Railway Company, and each filed a bond in the sum of \$50,000 with the United States Fidelity and Guaranty Company as surety thereon, and

Whereas said court in each the second and third of the above entitled causes has made an order under date of August 14, 1916, specifically extending said receivership to the property covered by and described in each of the mortgages respectively described and sought to be foreclosed in the bills of complaint in said second and third causes and provided therein that the bonds, with the written consent of the surety heretofore given by said receivers in the first entitled cause, shall extend to and cover the liability of said receivers in the second and third entitled causes respectively, and

Whereas subsequent to the making of said order said first three entitled causes have been consolidated and are now proceeding under the caption "Bankers Trust Company, Complainant, vs. the Cincinnati, Hamilton & Dayton Railway Company, Defendant, In Equity, No. 41, Consolidated Cause."

Now therefore the United States Fidelity and Guaranty Company, the surety on the bond of Judson Harmon, receiver, and on the bond of Rufus B. Smith, receiver, hereby consents that each of said bonds shall apply in each of said causes so consolidated and in said consolidated cause with the same force and effect to all intents and purposes as if the same had been originally made and filed in each thereof, and does hereby consent to the extension of said receivership as in said orders provided and the extension of said bond to cover the liability of said receivers in each of said causes and to the consolidation of said causes.

The United States Fidelity and Guaranty Company,

By Harry B. Hupp, Attorney-in-fact.

Attest: ———.

Acknowledged before me and approved.

Hollister, District Judge.

**Form No. 75****Acceptance of Appointment by Receiver, a Trust Company**

STATE OF MICHIGAN, THE CIRCUIT COURT FOR THE COUNTY OF  
KALAMAZOO. IN CHANCERY

Arthur W. Rickman, Complainant,

v.

Alfred G. Rickman, Peter L. Rickman and William D. Rickman, Defendants.

The Michigan Trust Company, a corporation of Grand Rapids, Michigan, has this day been appointed temporary receiver of all the assets and property of the firm of George Rickman Sons Company, a co-partnership, such appointment being made under the order of said court in the above entitled cause as will more fully appear upon reference to said order.

Now, therefore, the said, the Michigan Trust Company, does hereby accept by this writing the appointment to the office of temporary receiver so made by said court, and it does hereby undertake and agree faithfully to discharge the duties of said appointment and to account for all moneys and effects received by it as such receiver.

In witness whereof, the said, the Michigan Trust Company, has caused this instrument of acceptance to be signed and executed by an officer of said corporation thereunto duly authorized.

Dated, Kalamazoo, Michigan, September 27, A. D. 1910.

The Michigan Trust Company,

By ———, Secretary.

**Form No. 76****Receiver's Letter to Creditors of Partnership**

Grand Rapids, Mich., Sept. 29, 1910.

*To the Creditors of George Rickman Sons Company, of  
Kalamazoo, Michigan:*

Sirs: The undersigned was on September 27, 1910, appointed temporary receiver of the assets of George Rickman Sons Company, a partnership, by the circuit court for the County of Kalamazoo, Michigan, in a suit brought by Arthur W. Rickman, one of the partners, against the remaining members of the firm of George Rickman Sons Company, for a dissolution of partnership.

We have accepted the trust, and have taken possession but have not had opportunity to take an accurate inventory of the assets. We will immediately give the affairs of this firm a thorough investigation and expect to advise creditors of the exact condition in as short a time as possible.

The assets and liabilities as stated by the members of the firm to us are as follows:

The Rickman Hotel, at Kalamazoo, which is an eight-story hotel erected about two years ago, now the best hotel in Kalamazoo, and enjoying a very profitable business, valued at \$135,000 to \$150,000.

Two large flat buildings in Kalamazoo, valued at \$25,000 to \$28,000.

In addition to this, they claim amounts due on building contracts completed and nearly completed, about \$74,000. Also other general accounts receivable of which we have not had definite statement.

As against these assets, there are real estate mortgages of \$62,000, general unsecured liabilities of about \$80,000, and amount necessary to complete contracts, estimated at \$30,000. Upon these figures, which we have not yet been able to verify, this firm would seem to be amply solvent, and it is claimed that their present embarrassment is entirely due to the action



of certain creditors in endeavoring to force claims by lien proceedings against the buildings under construction, and to the fact that their other assets are such as not to be immediately available in their business, and the action taken has been with the idea of obtaining financial assistance necessary to enable them to complete their contracts and realize the amounts due thereon.

It will be of great assistance to us in our investigation if creditors will send us itemized statement of their claims, so that we can ascertain exactly the amount of liabilities. This statement need not be sworn to.

If any of the indebtednesses is in the form of promissory notes, we would like a statement of these notes, with the date of execution and of maturity.

We trust that you will assist us in this matter, and that we may promptly hear from you.

Very respectfully,

The Michigan Trust Company,

By George Hefferan, Secretary.

**Form No. 77****Notice to Holders of Unsecured Claims***Notice*

To General Unsecured Creditors of Missouri, Kansas & Texas  
Railway Company:

On November 17, 1917, the Hon. William C. Hook, United States Circuit Judge for the Eastern Division, Eastern District of Missouri, entered an order in the receivership proceedings now pending in said court against Missouri, Kansas & Texas Railway Company in that certain cause entitled:

IN THE DISTRICT COURT OF THE UNITED STATES, WITHIN AND  
FOR THE EASTERN DISTRICT OF MISSOURI, EASTERN DIVISION.

IN EQUITY. CONSOLIDATED CAUSE No. 4564

The Central Trust Company of New York, Plaintiff,  
v.  
Missouri, Kansas & Texas Railway Company, Defendant.

Fixing a time for filing general and unsecured claims of creditors and referring same to the undersigned special master for hearing, determination and classification, as prescribed by said order, viz.:

1. The holder or holders of unsecured claims or demands against said defendant, Missouri, Kansas & Texas Railway Company, and all persons (other than the holders of bonds or other obligations payable by said railway company and secured by mortgage or pledge of collateral, for respective trustees of mortgages or trust indentures given to secure payment of the same, and the holders of such claims as may have been approved for payment by orders herein) who claim any interest in, or lien upon any of the funds or property of said railway company in possession of the receiver, are required to file statements of the nature, dates of accrual and amounts of their respective claims and demands, duly verified by the oath of the person or by some officer of the corporation making such claims, with the undersigned James A. Seddon, heretofore

appointed special master in said cause, at his office, Room 902, Central National Bank Building, Seventh and Olive Streets, in the City of St. Louis, State of Missouri, on or before January 2, 1918.

2. Claims shall be proved on the basis of allowance of interest to September 27, 1915, the date of the appointment of the receiver, without prejudice to the right of the claimants to claim interest accruing thereafter upon the amounts found to be due to said claimants, respectively, on said September 27, 1915.

3. Any party to said cause, said receiver, and any party who files his claim or demand in accordance with said order may file with the undersigned special master within thirty days after January 2, 1918, an answer to any claim or demand filed with him and may contest the same.

4. All claims and demands so filed were referred to the undersigned special master to investigate, hear proof and report thereon both as to the amounts justly owing thereon, as to any liens by which they are secured and as to the order in which they are lawfully entitled to payment, it being provided the undersigned special master may in his discretion hear proofs in respect of claims contested or uncontested, in the City of Saint Louis or elsewhere, and shall notify all solicitors of record of the times and places of all hearings and may adjourn such hearings from time to time and from place to place.

5. The undersigned as such special master is directed to proceed under said order with all reasonable diligence and make and file in writing his report or reports on all claims, or demands, which have been filed and presented to him, and all solicitors of record in said cause, as well as the solicitors of record for the parties presenting said claims or demands, will be notified by the special master, in writing, of the filing of said report or reports, and any party to said cause or holding any such claim or demand filed as aforesaid, or said receiver, may, within twenty days from the time of the filing of any

such report of the undersigned special master, file specific exceptions thereto. Exceptions not so filed will not be considered by the court, and if no exceptions are filed within such twenty-day period, the report or reports will stand confirmed.

6. The special master shall cause that portion of this order relating to the presentation and allowance of claims to be published forthwith, once each week, for four successive weeks, in a newspaper of general circulation published in the City of Saint Louis, State of Missouri; in a newspaper of general circulation published in the City of Kansas City, State of Missouri; in a newspaper of general circulation published in the City of Topeka, State of Kansas; in a newspaper of general circulation published in the City of Oklahoma City, State of Oklahoma; and in a newspaper of general circulation published in the City of New York, State of New York.

James A. Seddon,

Special Master, Room 902, Central National Bank  
Building, Seventh and Olive Streets, St. Louis,  
Missouri.

Dated November 17, 1917.

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## Form No. 78

### Receiver's Published Notice to Creditors

Notice is hereby given that on December 31, 1915, the District Court of the United States for the Southern District of Ohio, Western Division, wherein the undersigned Judson Harmon and Rufus B. Smith, were appointed receivers of the Cincinnati, Hamilton & Dayton Railway Company on July 2, 1914, made and entered an order pursuant to the terms of which all persons, firms, associations and corporations having claims or demands against said receivers, growing out of or connected with the operation of said receivers of the railroad by the said receivers of the railroad of the Cincinnati, Indianapolis & Western Railway Company are requested to

present their claims in writing to said receivers on or before March 1, 1916, under penalty of having their claims not so presented disallowed, a copy of which order follows and is published by said receivers pursuant to the terms thereof.

Judson Harmon and Rufus B. Smith, receivers of the Cincinnati, Hamilton & Dayton Railway Company, Carew Building, Cincinnati, Ohio.

(Order)

## Form No. 79

### Receiver's Summary of Assets and Liabilities

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON PLEAS.  
No. 146490

Samuel P. Suit, Plaintiff,

v.

The Zapf Wagon & Lumber Company, Defendant.

#### *Summary of Assets and Liabilities*

##### ASSETS

Real estate, estimated .....	\$4,500.00
Machinery and stock, appraised.....	1,125.10
Accounts receivable, appraised .....	282.79
Cash on hand .....	51.79
<hr/>	
Total .....	\$5,959.68

##### LIABILITIES

Wages due .....	\$ 924.23
Secured claims .....	500.00
Preferred claims .....	28.59
Other notes.....	233.00
Accounts payable.....	595.00
<hr/>	
Total .....	\$2,280.82

## REAL ESTATE \*

All the following lot of land known and numbered as Lot No. 4 of a subdivision of ground made by Frank M. Steele, known as Frank M. Steele's Subdivision of North Bend, in Hamilton County, Ohio, said Lot No. 4 being sixty feet in front on the west side of Miami Avenue by a depth of one hundred feet, as will more fully appear from the plat as recorded in Plat Book No. 8-2, page 20, of the Records of Hamilton County, Ohio, being the same premises conveyed to the Zapf Wagon & Lumber Company by John Zapf et al, by deed recorded in Deed Book 963, page 588, of the Hamilton County, Ohio, Records. Unincumbered.

The following described real estate, to wit: in Miami Township, Section No. 20, Fractional Range 2 of the Miami Purchase, Hamilton County, Ohio, and more particularly described as being all that part of Lot No. 40, 41 and 42 which lies north of Cincinnati Avenue in Woodruff's Subdivision of North Bend, Ohio, as shown on Plat Book No. 3, pages 216 and 217 of the Records of Hamilton County, Ohio; being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel P. Suit and Walter S. Suit, by deed recorded in Deed Book 967, page 234, of the Hamilton County, Ohio, Records. Unincumbered.

The following described real estate situated in North Bend, Hamilton County, Ohio, to wit: Being in the Subdivision of Edward Woodruff of the Village of North Bend, in Section 20, Town 1, Fractional Range 2 of the Miami Purchase, as the same is recorded in Plat Book No. 3, pages 216 and 217 of the real estate records of said county, and being all of lot No. 39 of said subdivision, and being 162½ feet front on the north side of Cincinnati Avenue and 174.6 feet west of Symmes Avenue, and being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel

\* The above real estate has not been appraised by court appointed appraisers.

P. Suit and Walter S. Suit by deed recorded in Deed Book 967, page 234, of the Hamilton County, Ohio, Records.

Incumbered with a mortgage of \$500 held by the Southern Ohio Loan & Trust Company.

## WAGES DUE

Performed within three months of appointment of receiver.

Frank Vogel .....	\$ 10.00	
E. O. Brater .....	75.00	
Robert Steele .....	10.00	
		<hr/> \$ 95.00

Performed for receiver since his appointment.

Frank Vogel .....	\$ 5.00	
Aug. Kraus .....	26.00	
		<hr/> \$ 31.00

Performed before three months prior to receivership.

Frank Vogel .....	\$ 93.95	
E. O. Brater .....	352.00	
Fred Herald .....	26.50	
Aug. Kraus .....	309.35	
John Zapf .....	16.43	
		<hr/> \$798.23

Total .....		<hr/> \$924.23
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## SECURED CLAIMS

Southern Ohio Loan & Trust Company.

Mortgage on Lot 39 of Edward Woodruff's	
Subdivision of North Bend. Amount	
of note .....	\$500.00

## PREFERRED CLAIMS

E. K. Morris, purchases since receivership.....	\$ 28.59
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## OTHER NOTES

## Hamilton County National Bank.

Note due November 21, 1910.....\$150.00

Interest ..... 3.00

## The Sears Insurance Agency Company.

Note due January 18, 1911..... 80.00

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\$233.00

## ACCOUNTS PAYABLE

Buschle &amp; Wuest .....\$ 22.50

Geo. Calvert ..... 94.45

E. K. Morris &amp; Company..... 6.14

G. B. Schulte Sons Company..... 208.58

S. P. Suit ..... 8.00

Taxes ..... 51.23

Union Iron &amp; Steel Company..... 54.07

Ed. Wilke ..... 12.75

Edward O. Brater, Treasurer..... 137.90

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\$595.62

State of Ohio, Hamilton County, ss.:

We, the undersigned, do make solemn oath that we will truly, honestly and impartially appraise the property that may be exhibited to us belonging to the Zapf Wagon & Lumber Company in the hands of Edward O. Brater, receiver, and perform the other duties required by law of us in the premises, as appraisers, etc., according to the best of our knowledge and ability.

W. W. Taylor, G. W. Yancey, C. W. Caine, Appraisers.

Sworn to and subscribed before me this ——— day of December, 1910.

Ralph E. Clark,  
Notary Public, Hamilton County, Ohio.

We, the undersigned, appraisers of the property of the Zapf Wagon & Lumber Company in the hands of Edward



O. Brater, receiver, after being duly sworn, have made an inventory and appraisement thereof, etc., as follows:

No. of Items	Property Appraised	Value
Blacksmith Tools		
1	Large bellows, tuyer and pipe.....	\$ 14.00
1	Hand blower and tuyer iron and short pipe.....	12.00
1	Power fan blower and pipe connection.....	20.00
1	Steam and hand powerpost drill.....	50.00
1	Hand power drill .....	5.00
1	Tire bender .....	10.00
1	Tire stover .....	12.00
1	Large mandrel.....	5.00
1	Small mandrel .....	1.50
2	Anvils .....	20.00
1	Swage block .....	5.00
2	Blacksmith vices .....	12.00
3	Sledge hammers.....	1.50
60	Forging hammers .....	15.00
60	Forging bottom swages .....	15.00
35	Punches .....	1.50
2	Monkey wrenches .....	1.50
25	Heading tools .....	4.50
60	Pair tongs.....	15.00
1	Bolt cutter.....	2.00
3	Braces .....	2.00
7	Wrenches .....	1.85
2	Iron wagon jacks.....	3.00
2	Wooden wagon jacks.....	2.00
1	Set $\frac{1}{4}$ — $\frac{3}{4}$ cutting dies and stocks.....	10.00
2	Wheel travelers .....	1.00
Woodworking Machinery		
1	Hub boring machine, Eureka, Syracuse, N. Y....	30.00
1	20-inch planer, Fay & Egan.....	100.00
1	Scroll saw.....	5.00

No. of Items	Property Appraised	Value
8	Clamps .....	\$ 2.00
2	Braces .....	.50
3	Saws .....	2.25
1	Draw knife .....	.50
2	Vices .....	5.00
16	Bits .....	6.50
2	Planes .....	.50
9	Chisels .....	.50
2	Compasses (1 outsider).....	.25
1	Bevel square .....	.25
15	Pulleys and shafting.....	15.00
	Belting .....	5.00
1	Foos 7 horse power gasoline engine.....	15.00
1	Steam engine .....	<hr/>
6	Pullies, loose shafting, 2 hangers.....	2.00
1	Lot wagon maker patterns.....	5.00

## Stock on Hand

1	Platform wagon, $\frac{3}{4}$ finished.....	150.00
2	Jolt wagons, near completion.....	100.00
3	Front (\$30) and 5 hind hounds ironed (\$20)...	50.00
3	Hind bolsters ironed.....	7.50
3	Sand boards ironed.....	7.50
2	Single trees .....	1.50
2	Rough tongues .....	3.00
2	Finished tongues .....	5.00
16	Pair shafts .....	32.00
8	Sets wagon rims .....	28.00
5	Sets wagon spokes .....	15.00
1	Light delivery wagon bed.....	15.00
500	ft. Oak seasoned lumber.....	20.00
500	ft. Ash seasoned lumber.....	20.00
	Bar iron .....	40.00
2	Kegs horse shoes .....	6.00

No. of Items	Property Appraised	Value
1	Open wagon body .....	\$ 5.00
1	Wagon top, unfinished.....	5.00
1	Wagon body and top.....	20.00
1	Big wagon bed frame.....	10.00
2	Platform wagon double-trees .....	2.00
2	Ironed jolt wagon double-trees.....	4.00
3	Hay wagon ladders .....	9.00

## Secondhand Wagons

1	Light 3-spring one-horse wagon and top.....	50.00
1	Light 3-spring one-horse grocery wagon and top..	15.00
1	Light 3-spring one-horse grocery wagon ("E. P. Hey") .....	5.00
1	Singer sewing machine .....	5.00
1	Old desk .....	1.00
1	Old stove .....	1.00
	Saw frame .....	30.00

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\$1,125.10

## ACCOUNTS RECEIVABLE

Robert Barnes .....	\$ 3.75
Oscar Brater .....	2.60
A. Brower .....	15.50
Joe Bouvard .....	4.00
C. W. Caine .....	13.34
C. L. & A. Elec. St. Ry. Co.....	.75
Mrs. Eynon .....	3.75
John Green .....	5.70
William Harrell .....	2.40
George Harris .....	.90
Joe Knue .....	1.65
A. J. La Boiteaux.....	.30
John R. McGrath.....	32.00
Marmet-Halm Coal & Coke Co.....	10.85

Meyer Bros. ....	\$ 9.25
John Moreland .....	22.85
Wallace Moreland .....	27.00
Walter Moreland .....	33.15
Village of North Bend.....	1.20
George Niert .....	4.50
Sam Peak .....	1.45
H. Reininger .....	11.15
Carrie Schurick .....	10.25
Harry E. Steele .....	3.35
Walter Suit .....	.85
Mrs. Hannah Sullivan.....	.30
Ed. Sullivan .....	19.30
Stanley Struble .....	4.80
Tom Walton .....	.65
H. Ware .....	2.50
Frank Wells .....	.75
J. B. Wise .....	1.20
Wm. Young .....	30.80

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\$282.79

Cash on hand ..... 51.79

December 5, A. D. 1910.

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\$334.58

W. W. Taylor, G. W. Yancey, C. W. Caine, Appraisers.

The State of Ohio, Hamilton County, ss.:

Personally appeared before me, the undersigned notary public, in and for the said county, Edward O. Brater, receiver of the Zapf Wagon & Lumber Company, who upon oath deposeth and saith, that the annexed inventory and appraisement of the personal property of the said the Zapf Wagon & Lumber Company is in all respects just and true; that it contains a true and correct statement of all the personal property of the said company, which has come to the knowledge of the said Edward O. Brater, receiver, and particularly

of all money, bank bills, or other circulating medium belonging to the deceased, and all claims of the said company against the said Edward O. Brater, receiver, or other persons, according to the best of his knowledge.

Sworn to and subscriber before me, this December 17, 1910.

Edward O. Brater,

Ralph E. Clark,

Notary Public, Hamilton County, Ohio.

Address, North Bend, Ohio.

## Form No. 80

### Receiver's Account

A B, Plaintiff,

v.

C D, Defendant.

### *Receiver's Account*

To the \_\_\_\_\_ court.

I submit the following report as receiver in said cause.

#### I.

Property which has come into my hands:

1. Stock of merchandise (see inventory —).
2. Notes, accounts receivable, etc. (see inventory —).
3. Real estate.

#### II.

Cash which has come into my hands:

1. Proceeds of sale of merchandise.....\$\_\_\_\_\_
2. Proceeds of sale of notes and accounts... \_\_\_\_\_
3. Proceeds of sale of real estate..... \_\_\_\_\_
4. Proceeds of other sales..... \_\_\_\_\_
- Total collections from all sources.....\$\_\_\_\_\_

## III.

Moneys expended by me:

1. ....	\$ _____	
2. ....	_____	
3. ....	_____	
Balance on hand, if any...	_____	_____
Total Expenditures ....	same	same

There are no more funds to be realized from any source except from notes, book accounts, etc. I advise that said notes, accounts, etc., be sold to the highest bidder at private or public sale.

All of which is respectfully submitted.

Date \_\_\_\_\_, Receiver of \_\_\_\_\_.

## Form No. 81

## Receiver's Partial Report

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL  
CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA. No. 11950

Atlantic Trust Company, Plaintiff,

v.

Woodbridge Canal & Irrigation Company, et al., Defendants.

*Report of Receiver*

(Filed August 14, 1896)

To the Honorable, the Justices of the Circuit Court of the  
United States, of the Ninth Judicial Circuit, Northern  
District of California:

Now comes E. C. Chapman, receiver appointed by the court in the above entitled cause and makes and files this, a partial report of his proceedings as such receiver, for the information of the court; a more complete, detailed and itemized report of receipts and disbursements will accompany his final report or be made whenever thereunto required.

As shown by my report filed in this cause on December 29, 1894, I entered upon the discharge of my duties as such receiver immediately upon receiving my appointment and was put in possession of the property and assets on the same day. A detailed statement of the property of which I was so placed in possession accompanies my said report filed December 29, 1894. Up to that time I had received in cash the total sum of \$875.73 and disbursed \$903.66, leaving a balance due me on account of disbursements of \$27.93 as shown by the statement of account then made. As shown by subsequent reports made to this court, nearly, is not quite all, the bills receivable which came into my hands or of which account was furnished to me with the securities therefor, had been pledged or assigned by the corporation prior to my appointment, and I have been able to realize but very little, if any, money on account thereof; nearly all the money which I have since received has been realized from water rents for water supplied, and the amount has been wholly disproportionate to the expenses necessarily incurred.

At the time I entered upon my duties I found the large wooden dam of the company located at Woodbridge in a defective condition, and was advised by competent engineers that the west abutment thereof needed immediate repairs, and accordingly proceeded to make such repairs as advised by such engineers, and continued to supply water to the farmers who had secured from the company water rights, until the twenty-third day of July, 1895, when, without any warning or any means of prevention, the river undermined the easterly portion of the dam and carried away the east abutment thereof. This caused the river to change its channel and flow over the ground formerly occupied by such abutment. The quantity of earth carried away by this change in the course of the stream amounted to some 10,000 cubic yards, which formerly constituted the easterly bank thereof. Nor was this all the damage done. The sheet piling in front of the dam for a distance of 120 feet was completely washed out and many of the heavy

timbers supporting the large wooden front apron were displaced.

Prior to that time I had been authorized by the court to raise money on receiver's certificates to the extent of \$5,000, but had been entirely unable to do so without personally guaranteeing the payment of the same. Upon the washing away of this dam I notified the farmers, patrons of the company, and interceded with them for assistance in restoring the dam. After considerable communication and some delay, ten of them agreed to contribute the sum of \$1,500 for the restoration of the dam. I had previously purchased on credit all the lumber, hardware and materials necessary to complete the dam, and, having obtained this subscription from the farmers, I commenced work, and, after having carried on the work for two months, most of the farmers failed to pay in their subscriptions. When it became known that the payment of the subscriptions would not be forthcoming, nearly all of my employes, numbering some thirty at that time, quit work, and two of them undertook to attach all the personal property of the company, including wheelbarrows, shovels, lumber, ropes, tools, implements and appliances necessary for such work. The attaching officer, who had possession of such property, refused to release the same until an order was secured from this court and served upon him to show cause why he should not be punished for contempt when he released said property from the attachment. Thereafter, and on or about the first of November, after much deliberation and debate, the principal patrons of the company met and agreed to furnish money necessary for the repairs on the dam upon the condition that I should give them receiver's receipts for the money so furnished and that a competent engineer, whom they would name, should be appointed to supervise the work. To this I consented. The engineer who was unanimously selected by the farmers was W. C. Pidge, Esq., a former engineer of the Woodbridge Company. Under his direction, and with an additional expense of some \$5,000, the dam was finally repaired before the



commencement of the winter rains of 1895, and so remained until the twenty-sixth day of July, 1896. On this last-named day the dam was again undermined at the same place where the river broke through the preceding year. It was thought by the engineer in charge, upon the completion of the repairs, that it would be impossible for the river to undermine the dam again, as he claimed that the sheet piling was driven far down into a bed of blue clay which was supposed to form the bed of the river. But the fact that the river undermined the same is proof that his opinion was not correct. The foundation of the dam and the superstructure thereof still stand intact, but the sheet piling, by which the water is prevented from flowing through or under the dam, is not sufficient to hold the waters of the river. I am informed by civil engineers that there is a well-defined bed of clay in the bed of the river at the place where the dam was constructed, but from my experience with this work of repair and the result thereof, I am led to believe that it is not as good as it should be for such a dam as was constructed, and that hereafter it will be wise to make repairs on the theory that there is no bed of blue clay under the river.

The operating expenses of the ditch thus far amount to about \$8,000 and the expenses of repairing the dam, necessary expenses of repairing ditches and canals after the winter rains, cost of repairing bridges, syphons, checks, flumes, supply gates, waste gates, main headgates, drain boxes, culverts and canals, including necessary tools, implements and appliances therefor, so as to keep the property intact and preserve the rights thereto and supply water to those who had already acquired water rights prior to my appointment, amount to about the sum of \$12,000, making the aggregate of expenses which have thus far been incurred about \$20,000, exclusive of my own traveling expenses and exclusive of any compensation to myself or to my counsel for services or court expenses.

For these expenses so incurred, less the sum of about \$1,500, which I have collected from the patrons of the works and used in paying taxes and wages of the employes, leaving a balance of about \$18,500, I have issued receiver's certificates to the amount of \$5,000 given for the moneys advanced for the repair of the dam as aforesaid, the remaining \$13,500 being paid by time checks issued to employes for labor and by cash raised upon my own personal credit and advanced for the purposes aforesaid.

By reason of this last washing away of the dam, farmers holding water rights for about 3,000 acres of land have been cut off from the use of water at a time when it occasioned a loss of about one-third of their income from their lands for the current year, and unless the dam can be restored before the winter rains, will deprive them of water for the ensuing year; the value of the works and property will be very greatly depreciated and much loss will necessarily occur to all parties interested. I am unable to raise further funds on receiver's certificates. The farmers are not inclined to make further contributions, and the property, if offered for sale, would not, in my judgment, in its present condition, bring anything near its worth, and yet the longer it remains in its present condition, the more it is likely to depreciate. The water of the river has not gone down sufficient as yet to enable us to determine the extent and nature of the repairs necessary to restore the structure and preserve the efficiency of the works, but in my judgment it will require from \$2,000 to \$5,000 to accomplish the same.

The care and management of the property during the period of my incumbency has been very much less expensive than it was prior to my appointment, but while the property remains in litigation no advance steps can be made in the way of extending its operations and securing additional income for the use of water, and in my judgment the time has come when, in order to preserve the property, some steps must be taken by the parties interested in the property for supplying funds for

its protection, care and repair, or some order of the court should be made for the final disposition thereof.

E. C. Chapman, Receiver.

Fox, Kellogg & Gray, Attorneys for Receiver.

August 13, 1896.

Endorsed: Received copy hereof August 13, 1893.

E. P. Cole, per H. K.

Daniel Titus, J. J. Scrivner, Geo. W. Schell, Attorneys  
for Plaintiff.

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## Form No. 82

### Receiver's Report of Operation of Irrigating Company

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL  
CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA. No. 11950

Atlantic Trust Company, Plaintiff,

v.

Woodbridge Canal & Irrigation Company, et al., Defendants.

#### *Report of Receiver*

(Filed December 29, 1894)

To the Honorable, the Justices of the Circuit Court of the  
United States, of the Ninth Judicial Circuit, Northern  
District of California:

E. C. Chapman, receiver appointed by the court in the above-entitled cause, now comes and reports to the court as follows:

Upon receiving the order heretofore made by the court in this cause appointing me receiver therein, and on the third day of October, 1894, I duly qualified as such receiver and entered upon the discharge of my duties as such. On the fourth day of October, 1894, I visited the office, property and works of the company at Woodbridge in the County of San Joaquin, and was there by the superintendent in charge placed in charge and possession of the properties of the corporation

described in the schedule of properties handed to me at the time of my appointment, to wit:

Those certain irrigation canals situated and being in the County of San Joaquin, State of California, in township three (3) north of range five, six and seven (5, 6, 7) east, and being known and described as follows, to wit:

That certain dam built and constructed in and across from either bank of the Mokelumne river, in section 34, township 3 north of range ——— east.

Franklin Canal, 601 miles.

Main Canal, East Branch, 9,880 miles.

East Branch, Excavation No. 3, 4,640 miles.

Davis ———, 2,408 miles.

North Branch, 2,043 miles.

Spanker Ditch, 1,505 miles.

West Branch Canal, 4,570 miles.

Carr Ditch, 410 miles.

Swain Lateral, 495 miles.

Castle Lateral, 653 miles.

Weber Lateral, 264 miles.

Harshner Canal, 1,070 miles.

Parsons Canal, 500 miles.

The above canals, ditches and laterals being part of the system located as its point of beginning at the dam in Mokelumne river at the Town of Woodbridge in the east half of section 34, township 4 north of range ——— east.

II. Certain riparian rights, in all eighteen, along said Mokelumne river above and below the dam of the Woodbridge Canal & Irrigation Company.

III. Certain grants of right of way lying and being within said township 5 north of ranges 6, 5 and 7 east, and township 4 north of ranges 5 and 6 east, numbering sixty-three in all, and having an aggregate acreage of 330.43 acres.

IV. Certain contracts from the owners of the lands lying above said dam granting permission to said Woodbridge Canal

& Irrigation Company as assignee to construct, maintain, etc., said dam in said river, numbering eleven in all.

V. Certain parcels of real property situate and being in said County of San Joaquin, State of California, and bounded and particularly described as follows, to wit:

a. Being a small piece of land adjoining Block 2 in the Town of Woodbridge, known as the "Mill Property," being the land on which was erected the old flouring mill and building heretofore sold to C. C. Blair, and further described as Lots 4, 5 and 6 in Block F of Wood's Survey of the Town of Woodbridge.

b. 13.88 acres of land, situate, lying and being in said San Joaquin County on the north bank of the Mokelumne river, immediately opposite said Town of Woodbridge and immediately adjoining the said dam of the said Woodbridge Canal & Irrigation Company, and known as and called the "Cowboy Tract."

c. Certain bottom lands along the north side of said river adjoining the dam and works of said company at Woodbridge, and lying on the north side of said Mokelumne river, comprising all 96.95 acres and known and described as the "Journmay Purchase."

d. Those certain bottom lands situate in said County of San Joaquin and described as fractions No. 1 and 2 and the east half of the southwest quarter of section 32, township 4 north of range 7 east, M. D. B. and M.

VI. Those three certain water rights and locations on the Mokelumne river at said Woodbridge, notices of which said locations were posted by Byron D. Beckwith on the bank of said river on the twenty-second, twenty-third and thirtieth days of December, 1886, respectively, and filed in the office of the county recorder of San Joaquin County aforesaid on the thirty-first day of December, 1886.

VII. Those three certain water locations and claims to water flowing into the Mokelumne river, particularly described as follows, to wit:

a. A claim to said water to the extent of 250,000 cubic inches per second at the point on the north bank of said river about 250 feet above and on the opposite side of where Green's mill formerly stood in the Town of Woodbridge. Notice of which, bearing date of nineteenth day of May, 1890, and recorded May 20, 1890, in book "G," volume 8, page 251, of Miscellaneous Records of San Joaquin County, in the office of the county recorder of San Joaquin County.

b. A claim by one H. P. Perkins to said water to the extent of 345,600 inches, at the point where notice in writing was duly posted, that point being a pine tree on the south bank of said river near a suspended water pipe which leads across said river. Said notice bearing date November 6, 1890, recorded November 30, 1890, in book "L" of Mining Claims, pages 544 and 545, in the office of the county recorder of Calaveras County.

c. A claim to said water to the extent of 400 cubic feet per second at the point where notice in writing was duly posted by Byron D. Beckwith, that point being on the north bank of the Mokelumne river, on a live oak tree about 300 feet north of a suspension pipe across said river; said notice being dated January 25, 1892, and recorded January 26, 1892, in book "A" of Water Rights, page 186, in the office of the county recorder of Amador County.

VIII. All those certain pieces and parcels of land, being in the Counties of Calaveras and Amador, and bounded and particularly described as follows, to wit:

The fractional southeast quarter of the southwest quarter of section 33, and fractional northwest quarter of the southwest quarter of section 54, township 5 north of range 10 east, M. D. B. and M.; more particularly described in that deed made by Byron D. Beckwith to the Woodbridge Canal & Irrigation Company the eighth day of February, A. D. 1894, and recorded on the twenty-seventh day of June, 1894, in book "A," volume 83, page 78, of Deeds, San Joaquin County Records, and in volume 24 of Deeds at page 326, Calaveras

County Records, and recorded in volume 10 of Deeds at page 269 of the records of Amador County.

The said parcels of land containing in all 46.61 acres.

IX. Certain tools and implements used in and about said irrigation canal in the maintenance of said works; office fixtures, three horses, one buggy and harness. Also about 13,000 feet of mixed lumber of uncertain value.

X. Those certain promissory notes, payable to the Woodbridge Canal & Irrigation Company, and described as follows, to wit:

Note of A. M. Harshner, dated November 21, 1892, for \$400.

Note of E. J. and S. A. Parsons, dated January 31, 1893, for \$1,600.

Note of Helen Weber, C. M. Weber and Julia H. Weber, dated May 28, 1894, for \$3,946.02.

Note of Helen Weber, C. M. Weber and Julia H. Weber, dated May 28, 1894, for \$4,591.85.

Note of Helen Weber, C. M. Weber and Julia H. Weber, dated May 28, 1894, for \$1,963.66.

Note of J. Bischofberger, dated May 28, 1894, for \$1,530.20.

Note of H. C. Heron, dated May 28, 1894, for \$1,854.25.

Note of Mrs. M. A. Shinn, dated May 28, 1894, for \$425.

Note of F. T. Coman, dated May 28, 1894, for \$648.

Note of A. M. Harshner, dated May 28, 1894, for \$100.

Note of T. E. Jones, dated June 25, 1894, for \$896.37.

XI. All that certain right of way across a strip of land granted by J. J. Hinckley and wife to the Woodbridge Canal & Irrigation Company, along and over certain land of said Hinckley from the county road to the land acquired by said Woodbridge Canal & Irrigation Company on the eighth day of February, 1894, from Byron D. Beckwith hereinabove in this schedule specified.

I thereupon took charge of the office at Woodbridge and placed Mr. John Torey, Jr., a bookkeeper, in charge for me, with instructions to balance up the books and furnish me a trial balance and to furnish me a list of all bills receivable,

securities and other papers belonging to or affecting the property of the corporation found in said office or in the safe thereof. He proceeded to do so, and among other things furnished me with a trial balance, a copy of which is hereto annexed, marked Exhibit "A" and made a part of this report; also a list of bills receivable, a copy of which is hereto annexed, marked Exhibit "B" and made a part of this report; also a list of outstanding time checks issued to laborers and employes of said corporation, and appearing to remain unpaid, a copy of which list is hereto annexed, marked Exhibit "C" and made a part of this report; also a list of deeds, conveyances, grants of right of way, licenses and other evidences of title, or rights to water, or rights of way, a copy of which list is hereto annexed, marked Exhibit "D" and made a part of this report.

After balancing up the books and completing his labors at said office, and at the expiration of one month and four days after so placing Mr. Torrey in charge, I discharged him from further service at that office and placed the office and the properties theretofore under the charge of that office in charge of H. F. Mannion, as superintendent in charge under me.

Immediately after making these arrangements at Woodbridge I returned to San Francisco, and at the general office of the corporation demanded possession of all the books, papers and properties of the corporation held at that office. These were promptly turned over to me, and the keys of said office were delivered to me, but being doubtful of my right to prevent the officers of the corporation from having access to the minute book and other strictly corporate books, I placed the secretary of the corporation in charge of said office, and he is still in said office in charge of said books, I, however, having free access to same for purposes of information or any of the purposes required in the performance of my duties.

For the purpose of protecting said works and property and of preventing the destruction and waste thereof, I have found it necessary to employ and have employed, in addition to the



bookkeeper aforesaid, one man to have the charge of and preserve the rights of the property of the corporation at the upper water claim on the Mokelumne river near Campo Seco, who is employed at a salary of \$2.50 per day; also another on the lower location near the Town of Woodbridge in San Joaquin County, at a salary of \$2 per day; also a night watchman at the dam near Woodbridge, at \$2.50 per day; also the superintendent in general charge of the works, whose services are worth about \$5 per day; also a young man to assist said superintendent at \$2.50 per day. I also found it necessary to employ the former assistant superintendent of the works for the period of two weeks and at a cost of \$50, to go over the entire works with me and specifically point out the property of the corporation. I have also been compelled to cause certain repairs to be made upon the dam near Woodbridge, which has been done at a cost of \$297.04, exclusive of the service of the superintendent.

As such receiver there has come into my possession the sum of \$875.73 in money, the property of said corporation, and my disbursements as such receiver have been as follows:

To paid out for work done for labor at the dam at Woodbridge as above stated.....	\$297.04
To paid for Wells, Fargo envelopes.....	.10
To paid expressage on time check mem. sent to the sec- retary upon Mr. McAllister's telegraphic request..	.25
To paid for stamps.....	.50
To paid for post office box.....	.40
To paid express charges by river express on typewriter, Stockton to San Francisco and return.....	.70
To paid W. C. Pidge.....	2.00
To car fare, \$2.95; livery, \$1; meals, .50.....	4.45
To paid telegram .....	1.00
To candles, .15; tool sharpening, .25.....	.40
To stamps .....	.50
To paid J. J. Hinckley.....	40.00
To paid Elliott Bray.....	30.00

To paid N. I. Baldwin.....	\$ .50
To paid John Torrey.....	100.00
To paid taxes.....	156.91
To pump handle, .25; hotel bill, Hinckley's, \$2.....	2.25
To harness hire.....	.50
To stamps, \$1.00; telegram, .25.....	1.25
To paid Elliott Bray.....	5.00
To board bill.....	22.50
To fare to Stockton and return.....	.90
To paid J. Torrey, Jr.....	13.33
To paid F. M. Limbaugh.....	15.00
To paid for rent of office.....	4.00
To paid H. F. Mannion.....	70.88
To trips to Stockton and Campo Seco.....	82.80
	<hr/>
	\$903.66

## RECAPITULATION

Total paid out.....	\$903.66
Total cash received.....	875.73
	<hr/>
Balance due me.....	\$ 27.93

And the said receiver respectfully represents to the court that he is without funds to reimburse himself for the balance of cash expended as aforesaid, or to pay the accruing expense for men in his employ, or to pay his own personal expenses in attending to the business, or wherewith to pay counsel for services rendered in his behalf, and he prays the court for an order authorizing him to borrow the sum of seven thousand five hundred (\$7,500) dollars to be used for the purposes aforesaid, and accounted for to the court.

E. C. Chapman, Receiver.

Dated this twenty-sixth day of December, 1894.

Fox, Kellogg & Gray, Attorneys for Receiver.

## EXHIBIT "A." TRIAL BALANCE FROM

Books of the Woodbridge office of the Woodbridge Canal & Irrigation Company, showing the condition of the various accounts as written up to the time when the receiver of said company, under appointment from the United States Circuit Court, took possession of the affairs of said company on the morning of October 4, 1894.

Profit and Loss.....	\$	.65
Construction .....	\$ 11,735.53	
Canal Expense .....	9,920.99	
Discount .....		1.25
Office Fixtures .....	179.75	
Lumber .....	10,748.10	
Material .....	1,964.29	
Tools and Implements.....	1,097.45	
Pile Setting .....	958.75	
Real Estate .....	15,680.00	
Bridges and Culverts.....	2,408.31	
Exchange and Interest.....		373.19
Feed Account .....	650.90	
Rights of Way.....	9,416.76	
Repairs .....	907.13	
Franklin Canal .....	1,256.22	
B. A. Laws.....	200.00	
J. C. Thompson.....		7.00
Water Rights .....		58,211.99
Bank of Lodi.....	6.29	
Freight .....	448.91	
Ah Hong .....		2,329.50
W. H. Williams.....		1,646.92
San Francisco Office.....		85,891.48
Ezra Fiske .....	19.05	
Chris Franklin .....	13.71	
John Lane .....		.25
Labor .....	45,928.40	
East Branch Canal Extension No. 2...	23,561.32	

Cash .....	\$ 82.30	
W. C. Pidge .....		\$ 1,408.00
J. G. Swinnerton.....		25.00
Time Checks .....		20,242.85
H. Bentley .....		122.00
Upper Location .....	8,215.92	
Expense .....	9,466.37	
Dam and Headgates Repairs.....	28.60	
Canal Repairs .....	21.40	
Davis Canal .....	2,306.23	
Woodbridge Yard .....	167.50	
P. A. Buell & Co.....		10.47
North Branch Canal (\$3,173.74).....	3,173.74	
Spencer Ditch .....	2,143.13	
Helen, Chas. M. and Julia H. Weber..	30.42	
East Branch Yard.....	105.29	
H. C. Herren.....	28.43	
Taxes .....	8.25	
Team and Buggy Account.....	338.00	
Harshner Canal (\$254.15).....	254.15	
Stable Expense .....	2.05	
Team and Buggy Expense.....	60.40	
Accident Account .....	255.55	
Water Rights Expense.....	22.50	
Blanks and Stationery.....	44.50	
Recording .....	205.00	
Real Estate Expense.....	67.70	
Advertising Account .....	400.00	
Rights of Way Expense.....	23.50	
Richard Cope .....		20.00
Wright and Corsen.....		7.12
Lodi Sentinel .....		3.00
A. H. Randall.....		680.00
E. M. and M. Carr.....	14.60	
Extra Irrigation .....		100.25
Cornelius Swain .....	271.00	
John A. Swain.....	2,000.20	

H. K. Goodwin.....		\$	5.15
J. U. Castle.....	\$ 1,600.00		
Stockton Evening Mail.....			200.00
R. E. Wilhoit & Sons.....			2.00
Stockton Daily Independent.....			321.00
J. W. Kerrick.....			16.65
Mrs. C. Gerard.....			1.30
S. Newell .....	62.80		
West Branch Canal.....	2,800.00		
R. W. Williams.....			11.00
R. J. and S. A. Parsons.....	229.34		
Mrs. E. Franklin.....			280.05
C. W. and P. Yolland.....	1.75		
H. Beckman .....	717.70		
Script (Woodbridge Issue).....			898.58
T. R. Burkett.....			37.70
Annual Rentals .....			2,778.23
L. M. Morse.....	254.40		
A. M. Harshner.....			22.80
E. L. Carver.....			12.00
A. H. Cowell.....			46.80
Noble & Reid.....			21.50
Carr Ditch .....	1,232.80		
Swain Lateral .....	323.15		
Castle Ditch .....	737.45		
Weber Ditch .....	428.37		
Damage Account .....	560.00		
J. J. Collins.....			51.47
	<hr/>	<hr/>	
	\$175,787.15		\$175,787.15

(Here follow Exhibits "C" and "D.")

**Form No. 83****Receivers of Railway—Monthly Account**

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. IN EQUITY. No. 41

Bankers Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

*To the Hon. Howard C. Hollister, Judge of the District Court  
of the United States, Southern District of Ohio:*

Your receivers, Judson Harmon and Rufus B. Smith, submit the following report of the cash receipts and disbursements of the receivers of the Cincinnati, Hamilton & Dayton Railway for the month of November, 1916, and report of the income of said railway for the month of November, 1916:

CASH RECEIPTS AND DISBURSEMENTS IN NOVEMBER, 1916

Receipts:

From Prior to Receivership Accounts .....	\$ 12,975.20	
From Agents Remittances .....	1,129,752.77	
From Conductors Remittances ..	3,241.01	
From Bills Collectible .....	191,492.33	
From Car Service and Per Diem Balance .....	9,529.17	
From Ticket Balances .....	11,663.61	
From Freight Balances .....	131,126.92	
From Mail Earnings .....	9,658.15	
From Express Earnings .....	32,877.60	
From Other Receipts .....	12,207.99	
		<hr/>
Total Receipts, Nov., 1916...		\$1,544,524.75
Cash on Hand, Nov. 1, 1916.		388,209.16
		<hr/>
Total .....		\$1,932,733.91

## Disbursements:

For Prior to Receivership Accts.	\$ 126,584.46	
For Car Service and Per Diem		
Balances .....	74,142.23	
For Ticket Balances .....	10,073.49	
For Freight Balances .....	268,411.67	
For Unclaimed Wages .....	632.56	
For Payroll Checks .....	384,028.25	
For Audited Vouchers .....	702,933.01	
<hr/>		
Total Disbmts., Nov., 1916..		\$1,566,805.67

## Balance:

On deposit with J. P. Morgan		
& Co. ....	\$ 14,279.99	
On deposit with First Natl. Bk.		
of Cincinnati, Ohio .....	219,069.27	
On deposit with Provident Sav-		
ings Bank & Trust Co.....	49,170.43	
On deposit with First Natl. Bk.		
of Toledo, Ohio .....	36,360.29	
On deposit with Third Natl. Bk.		
of Dayton, Ohio .....	47,048.26	365,928.24
<hr/>		
Total .....		\$1,932,733.91

## INCOME ACCOUNT—MONTH OF NOVEMBER, 1916

## Operating Revenues:

Freight .....	\$ 675,294.11	
Passenger .....	94,191.02	
Mail .....	9,547.87	
Express .....	16,012.49	
Switching .....	37,550.22	
Other Rail Lines .....	5,516.42	
Incidental and Joint Facility...	33,438.07	
<hr/>		
Total Operating Revenues.		\$ 871,550.20

**Operating Expenses:**

Maintenance of Way & Structures.	\$ 136,255.17
Maintenance of Equipment.....	148,569.78
Traffic Expenses .....	16,222.20
Transportation Expenses .....	349,892.53
Miscellaneous Operations .....	3,000.00
Valuation Expenses .....	1,015.05
General Expenses .....	19,474.84
	<u>1,513.95</u>

Total Operating Expenses.	<u>672,915.62</u>
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Net Operating Revenue...	<u>\$ 198,634.58</u>
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Tax Accruals .....	\$ 31,641.08
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Uncollectible Railway Revenues....	83.63	<u>31,724.71</u>
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Total Operating Income.	<u>\$ 166,909.87</u>
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Other Income .....	<u>14,310.25</u>
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Gross Income .....	<u>\$ 181,220.12</u>
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**Deductions from Gross Income:**

Hire of Equipment.....	\$ 48,619.39
Rent of Leased Roads.....	25,894.91
Rent of Joint Facilities.....	6,551.39
Miscellaneous Leases .....	867.48
Miscellaneous Deductions .....	910.83
Interest on Equipment Obligations	<u>3,866.67</u>

Total Deductions .....	<u>86,709.77</u>
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Net Income .....	<u>\$ 94,510.35</u>
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Respectfully submitted,

Judson Harmon,

Rufus B. Smith,

Receivers.

December 30, 1916.



**Form No. 84****Reorganization of Railway—Plan and Agreement**

*To Holders of Twenty-Year Five Per Cent. Gold Debentures, Certificates of Deposit issued by Bankers Trust Company for said Debentures, and Certificates for Shares of Stock of the Chicago, Rock Island & Pacific Railway Company:*

On April 20, 1915, receivers of the railroads and properties of the Chicago, Rock Island & Pacific Railway Company (hereinafter referred to as the Railway Company) were appointed and the receivership still continues. The interest on the twenty-year five per cent. gold debentures (hereinafter referred to as the debentures), which matured January 15, 1916, and July 15, 1916, has not been paid, and such interest has continued in default beyond the sixty-day period of grace provided in the indenture under which the debentures were issued. No defaults have occurred in the payment of interest upon any of the obligations of the Railway Company secured by lien upon its property or the property of its subsidiary railroad corporations. A committee representing certain holders of the Railway Company's first and refunding bonds has, however, commenced suit by leave of court for the foreclosure of the first and refunding mortgage, alleging various defaults other than nonpayment of interest. This litigation is being contested by the Railway Company and by the joint reorganization committee. Representatives of the joint reorganization committee have been holding informal conferences with members of the said committee representing first and refunding bondholders of the Railway Company.

Under the provisions of the accompanying agreement the joint reorganization committee is empowered to make any settlement, compromise or arrangement that may, in its discretion, be deemed advisable with respect to the first and refunding bonds or with respect to any other secured or unsecured obligations of or claims against the Railway Company.

The Railway Company has outstanding in the hands of the public \$20,000,000 face amount of debentures, and \$74,359,722.50 par value of capital stock all of one class.

Negotiations between members of the debenture committee, the Amster committee and the Hayden committee have resulted in concerted action looking to early reorganization of the Railway Company. As a result of these negotiations, and upon the understanding that approximately \$30,000,000 new cash capital would be provided in reorganization, the debenture committee has consented that the plan shall provide for the delivery to debenture holders of six per cent. preferred stock of the new company (cumulative up to five per cent. per annum) in lieu of the fixed charge obligations now held by them. Investigations have been made of the physical condition, operations, earning power and accounts of the Railway Company by experts, based upon which the joint reorganization committee has prepared the following:

#### PLAN

The railroads and properties of the Railway Company are either to be retained in the present company, subject to a readjustment of securities as hereinafter provided, or are to be vested in a new company or the Railway Company otherwise reorganized, as may be determined by the joint reorganization committee, subject to all liens of record by way of mortgage or deed of trust and to such liens as may be substituted for any thereof. The company in which the railroads and properties of the Railway Company shall be so vested or retained is hereinafter called the new company.

#### NEW SECURITIES

The new company will have capital stock presently issuable of \$125,000,000 par value, consisting of shares of the par value of \$100 each, whereof

\$30,000,000 par value will be seven per cent. preferred stock;

\$20,000,000 par value will be six per cent. preferred stock; and

\$75,000,000 par value will be common stock.

The joint reorganization committee may in its discretion determine that the authorized amounts of the six per cent. preferred stock or of the seven per cent. preferred stock, or both, shall exceed the amounts above specified by not more than \$15,000,000 in par amount for both; and any part of such preferred stock not required for the purposes of the plan may be placed in the treasury of the new company for its general corporate purposes. The authorized amounts of the preferred stocks may not be increased after reorganization except by vote of a majority of each class of stock of the new company outstanding, each class voting separately.

The preferred stocks of both classes shall share *pari passu* in the distribution of assets upon insolvency or dissolution of the new company, and shall, in such event, be preferred over the common stock in the payment of the entire par value of the preferred stocks, plus any unpaid dividends then accumulated thereon, before any payment or distribution shall be made upon the common stock.

The seven per cent. preferred stock shall have preference and priority over the six per cent. preferred stock as to dividends to the extent of one per cent. in any fiscal year, which shall be first declared and paid or set aside for payment before any dividends shall be declared upon the six per cent. preferred stock; but, after the declaration and payment or setting aside of such one per cent. in any fiscal year on the seven per cent. preferred stock, the shares of both classes of preferred stock shall rank *pari passu* as to further dividends declared and paid thereon. Dividends upon the seven per cent. preferred stock presently to be issued hereunder shall be cumulative up to but not exceeding five per cent. per annum from and after such date as may be fixed by the joint reorganization committee having regard to the amounts of the several installments and the respective dates fixed for the pay-

ment thereof by depositing stockholders. Dividends upon the six per cent. preferred stock to be issued in exchange for debentures as hereinafter provided shall be cumulative up to but not exceeding five per cent. per annum from and after July 15, 1916. The joint reorganization committee may, in its discretion, by unanimous vote of the members of said committee, upon or after the consummation of the plan, pay in cash, either out of the funds provided for under the plan or otherwise, all or any part of the amount that would otherwise then have accumulated by way of dividend on said six per cent. preferred stock issuable in respect of debentures, or on said seven per cent. preferred stock, or on both, without any modification whatsoever of the plan or of the accompanying agreement; and thereupon the dates from which dividends shall accumulate on such six per cent. preferred stock or on such seven per cent. preferred stock, or both, as the case may be, shall be changed accordingly.

The charter of the new company shall provide that the whole, but not a part, of the seven per cent. preferred stock outstanding may at any time be purchased or redeemed on any dividend payment date by the new company at \$105 per share plus the amount of all cumulative dividends accrued thereon; and that, either independently or contemporaneously, the whole, but not a part, of the six per cent. preferred stock outstanding may be likewise purchased or redeemed by the new company at any time on any dividend payment date at \$102 per share plus the amount of all cumulative dividends accrued thereon. The charter shall also provide, in such form as the joint reorganization committee shall approve, for the notice to be given of any such redemption and all the other conditions and provisions for such redemption.

The right of cumulative voting upon shares of stock at all elections for directors of the new company shall be provided for by the charter of the new company, and all directors shall be elected annually.

In lieu of the seven per cent. preferred stock and six per cent. preferred stock, if in the judgment of the joint re-

organization committee it shall be more expedient so to do, there may be issued income debentures of the new company which shall have substantially the same priorities, substantially the same rights as to distribution of earnings and assets and, if practicable, substantially the same voting privileges, including cumulative voting for directors as above stipulated in respect of the proposed seven per cent. and six per cent. preferred stocks.

#### DISTRIBUTION OF NEW SECURITIES

For the purposes of the cash requirements of the plan, estimated at \$29,743,889, a purchase agreement has been entered into by the joint reorganization committee with Messrs. Speyer & Co. and Messrs. Hayden, Stone & Co., therein and herein referred to as the bankers, whereby the latter have agreed to purchase, for the sum of \$29,743,889, less a commission of three per cent. the \$29,743,889 par value of seven per cent. preferred stock and the \$74,359,722.50 par value of common stock of the new company to be presently issued.

The bankers have authorized the joint reorganization committee to offer for account of the bankers, the seven per cent. preferred stock and the common stock of the new company so to be acquired by them to holders of certificates of deposit for stock of the Railway Company to the extent below stated. Such holders of certificates of deposit for stock of the Railway Company as shall avail themselves of such offer and as shall participate in the plan will receive, upon the consummation of the plan and the surrender of their respective certificates of deposit and upon payment therefor as herein provided, in respect of each share of stock of the Railway Company represented by such certificates of deposit:

\$100 in par value of common stock of the new company,  
and

\$40 in par value (being identical with the amount of  
the cash payment) of seven per cent. preferred  
stock of the new company;

or interim certificates or receipts representing same.

Upon the consummation of the plan and the surrender of their respective certificates of deposit depositing debenture holders will be entitled to receive in cash \* the five per cent. arrears of interest on their debentures to July 15, 1916, and, in respect of each \$1,000 debenture, \$1,000 in par value of six per cent. preferred stock of the new company or interim certificates or receipts representing same.

#### SHARE CAPITALIZATION OF NEW COMPANY

New Securities	Authorized	To be presently issued
7% preferred stock.....	\$ 30,000,000†	\$ 29,743,889.00
6% preferred stock.....	20,000,000†	
to be issued in exchange for		
Debentures say.....		20,000,000.00
Common stock.....	75,000,000	74,359,722.50
Total.....	\$125,000,000	\$124,103,611.50

#### DEPOSITS OF EXISTING SECURITIES

Such of the holders of stock of the Railway Company as may desire to participate in the plan must deposit their shares, on or before such date as may be prescribed by the joint re-organization committee, subject to the terms and provisions of the plan and the accompanying agreement, with either of the depositaries named below and must promptly make, in current New York or Chicago funds, according to the place of deposit, the following cash payments in respect of each share of stock so deposited, viz.:

30 days after the first publication of notice requiring the payment thereof .....	\$10
15 days after the first publication of notice requiring the payment thereof (not sooner, however, than thirty days after the plan shall have been declared operative) .....	10

\* With suitable adjustment in the case of debentures in respect of which an advance upon the January 15, 1916, coupon has been made.

† May be fixed at a greater authorized par amount as provided on page 4.

15 days after the first publication of notice requiring the payment thereof (not sooner, however, than ninety days after the plan shall have been declared operative) . . . . . 20

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Total . . . . . \$40

The nonpayment of any installment upon or prior to the date specified therefor will render the deposited stock and any prior payments liable to forfeiture.

The debenture committee has approved this plan and agreement and, pursuant to the deposit agreement dated July 19, 1915, is about to give notice to the holders of certificates of deposit issued under such deposit agreement, and intends to deposit, subject to the terms and provisions of the plan and of the accompanying agreement, all debentures now on deposit with Bankers Trust Company under such deposit agreement dated July 19, 1915, with respect to which the right of withdrawal shall not be promptly exercised as provided in said deposit agreement; and, upon the making of such deposit, every holder of a certificate of deposit issued under or pursuant to said deposit agreement shall conclusively be deemed irrevocably to have assented to the plan and the accompanying agreement and shall be bound by all the terms and provisions thereof. Such of the holders of debentures of the Railway Company as may desire to participate in the plan and as may not have deposited their debentures with the debenture committee must deposit their debentures, accompanied by the coupons matured January 15, 1916, and all subsequently maturing coupons appertaining thereto, on or before such date as may be prescribed by the joint reorganization committee, subject to the terms and provisions of the plan and of the accompanying agreement, with either of the depositaries named below. In respect of every such deposit, and of every deposit of stock, a certificate of deposit, in such form as may be approved by the joint reorganization committee, will be issued by the depositary receiving the same.

Application will be made to list upon the New York Stock Exchange such certificates of deposit as are not already listed.

If the plan shall be abandoned, there will be delivered, to every holder of a certificate of deposit for stock, certificates representing in the aggregate the number of shares of stock specified in his certificate of deposit, together with an amount in cash equal to the installment or installments paid in respect of such shares of stock plus interest earned thereon, upon surrender of such certificate of deposit and upon payment of the pro rata share of such shares of stock in the compensation, expenses, disbursements and liabilities of the joint reorganization committee as fixed and determined by said committee in accordance with the provisions of the accompanying agreement (such pro rata share, however, not to exceed \$2.00 per share of stock). If, after being declared operative, the plan shall be abandoned, there will be delivered to every holder of a certificate of deposit issued in respect of debentures the amount of debentures in face value specified in such certificate of deposit, together with all unpaid coupons thereto attached, upon surrender of such certificate of deposit and upon the repayment of such amounts (with interest thereon) as may have been advanced upon, or as may have been paid in respect of, the coupon that matured January 15, 1916, and of such other amounts (with interest) as may have been paid or advanced in respect of interest on such debentures, and upon payment of the pro rata share of such debentures in the compensation, expenses, disbursements and liabilities of the joint reorganization committee, as fixed and determined by it in accordance with the provisions of the accompanying agreement (such pro rata share, however, not to exceed \$20 per \$1,000 debenture); and if the plan shall not be declared operative, the debentures deposited under the plan by the debenture committee will be returned to the debenture committee subject to the payment of the pro rata share of such debentures in the compensation, expenses, disbursements and liabilities of the joint reorganization committee, as fixed and determined by it in accordance



with the provisions of the accompanying agreement (such pro rata share, however, not to exceed \$20 per \$1,000 debenture), and the debentures deposited under the plan otherwise than by the debenture committee will be delivered to the holders of certificates of deposit issued in respect of same upon payment of their like pro rata share.

#### DEPOSITARIES

Bankers Trust Company, 16 Wall Street, New York City, and First Trust and Savings Bank, Dearborn and Monroe Streets, Chicago, have been named, and have agreed to act, as the depositaries under this plan.

#### DECLARING PLAN OPERATIVE

The plan is to become operative only when the joint reorganization committee, in its absolute discretion, shall determine that sufficient amounts of debentures and stock have been deposited or have assented thereto. In such case, the joint reorganization committee will declare the plan operative and will publish notice simultaneously in New York and Chicago to that effect. The plan will become operative upon the date of the first publication of such notice.

#### APPLICATION OF FUNDS

It is proposed that the \$29,743,889 cash to be provided under the plan shall be applied as follows:

To the payment or acquisition of:

Two-year Collateral Trust Gold Notes..	\$7,500,000	
Loan, Central Trust Company, secured		
by collateral .....	2,500,000	
Loan, Hayden, Stone & Co., secured by		
collateral .....	1,600,000	
Receiver's Certificates, Series A.....	5,488,000	
Receiver's Certificates, Series B.....	1,100,000	
		<hr/> \$18,188,000

To pay or acquire claims against and liabilities of the receiver, to pay interest and other debts of the new company, and to pay the expenses of the reorganization (including compensation and allowances, counsel fees, court costs, services of engineering, accounting and other experts, etc.), and other incorporation and reorganization disbursements, syndicate commissions, and miscellaneous requirements and to provide additional working capital for the general corporate purposes of the new company .....		\$11,555,889
		<hr/>
		\$29,743,889

The plan will leave unaffected various claims against the Railway Company incurred in the conduct of operations by it or by the receiver, which will have to be met, contested or otherwise disposed of by the new company. The more important of these claims are set forth in the appendix annexed to the plan, to which attention is hereby directed. As against these claims the receiver will, upon the consummation of the plan, turn over to the new company all moneys then remaining undisposed of in his hands. On November 2, 1916, the moneys so in the hands of the receiver amounted to \$4,821,589, a part of which represented accumulations made by him in anticipation of payments then presently to become due.

#### TREASURY ASSETS

Upon payment of the above mentioned collateral loans (aggregating \$11,600,000), as provided in the plan, there will be liberated for the use for the general corporate purposes of the new company the treasury securities now pledged as collateral for those loans, including

Railway Company's First and Refunding Mortgage  
 (4%) Bonds .....\$16,199,000

St. Paul & Kansas City Short Line R. R. Co.

First Mortgage ( $4\frac{1}{2}\%$ ) Bonds..... 2,545,000\*

Rock Island, Arkansas & Louisiana R. R. Co.

First Mortgage ( $4\frac{1}{2}\%$ ) Bonds..... 1,965,000

The joint reorganization committee is advised that in addition to the above enumerated bonds (which will be released from pledge when the above mentioned collateral loans shall be paid), there are reserved for issue under the provisions of the first and refunding mortgage (a) \$7,000,000 face amount of the first and refunding bonds against construction and property betterments made during the calendar years 1915 and 1916, and, (b) upon the retirement of the receiver's certificates issued to pay the so-called Choctaw serial collateral bonds matured May 1, 1915, and 1916, a further \$2,988,000 face amount of first and refunding bonds. \$20,988,000 additional first and refunding bonds are also reserved for issue for the purpose of refunding the \$12,500,000 first mortgage six per cent. bonds due July 1, 1917, the \$5,500,000 Choctaw, Oklahoma & Gulf general mortgage five per cent. bonds due October 1, 1919, and the Choctaw serial collateral bonds due severally \$1,494,000 May 1, 1917, and \$1,494,000 May 1, 1918. The joint reorganization committee is advised that all first and refunding bonds so issued and certain bonds of subsidiary companies will be available as treasury assets of the new company. By attaching appropriate additional coupons it will be possible to sell such of the first and refunding bonds as it may be deemed desirable to dispose of at a price more nearly approaching their face value than the present market price. Such additional coupons will be a fixed charge of the new company, but will not be secured by the first and refunding mortgage. It is proposed to sell, before declaring the plan operative, an amount of such first and refunding bonds at least sufficient to provide for the payment at maturity of the \$12,500,000 face amount of first mortgage six per cent. bonds and the \$1,494,000 Choctaw serial collateral bonds falling due in 1917.

\* \$212,000 additional bonds of this issue are in the receiver's treasury.

## EARNINGS

From the receiver's reports, it appears that the income of the Railway Company for the year ended June 30, 1916, applicable to interest charges amounted to \$15,269,479, after deducting all rentals, equipment hire, taxes, etc., and after making maintenance expenditures upon the property. The total interest charges on funded and unfunded debts for the same period amounted to \$12,312,198. In the above mentioned deduction of rentals, etc., annual rentals and interest charges (amounting to about \$650,000) of certain affiliated companies were included, although not paid by the receiver. After deducting all interest charges including the \$1,000,000 accrued interest on the debentures (\$958,333 of which was not paid), there remained a surplus for the year ended June 30, 1916, of \$2,957,281. If and when the receiver's certificates and the aforementioned collateral loans shall be paid and the debentures exchanged for six per cent. preferred stock, as provided in the plan, a reduction at the rate of \$2,054,400 per year in the company's fixed charges will be effected, as follows:

\$ 7,500,000 Two-year Notes (interest and commissions) .....	\$ 525,000
2,500,000 Loan, Central Trust Company.....	125,000
1,600,000 Loan, Hayden, Stone & Co.....	64,000
20,000,000 Twenty-year Gold Debentures.....	1,000,000
5,488,000 Receiver's Certificates, Series A.....	274,400
1,100,000 Receiver's Certificates, Series B.....	66,000
<hr/>	
Total annual reduction*.....	\$2,054,400

Taking the net income for the fiscal year ended June 30, 1916, as the basis, there would have been, after crediting to the earnings for that year an amount equal to its proportion of the savings that will be thus effected in reorganization, a surplus of \$4,894,977 applicable to dividends on the stock,

\* Amount actually charged for the fiscal year ended June 30, 1916, was \$1,937,696, because part of the receiver's certificates were outstanding for a few months only and rates of interest and commissions on certain of the loans were changed during that year.

equivalent to the full dividends on the \$50,000,000 of preferred stocks of the new company presently issuable and a balance of \$1,594,977 for the common stock.

For the four months ended October 31, 1916 (October estimated) the gross earnings of the Railway Company were \$29,577,985, an increase of \$4,325,300 over the same period in 1915.

#### AGREEMENT OF REORGANIZATION

This plan and the subjoined agreement have been approved by the debenture committee, the Amster committee and the Hayden committee.

All matters in any way relating to the reorganization and not herein specifically provided for shall be determined by the joint reorganization committee.

Annexed hereto is an appendix containing financial data and other information concerning the Railway Company.

The joint reorganization committee has caused the statements and figures contained in the foregoing plan and in the appendix and agreement accompanying the same to be compiled from sources believed by it to be reliable, but none of such statements or figures shall in any case be construed as representations or warranties, and all of same shall be subject to correction.

For all purposes of the plan the accompanying agreement shall be taken and deemed to be a part of the plan, and the plan shall be deemed included in the agreement. In the event of any conflict between the plan and the agreement the provisions of the agreement shall control.

Seward Prosser, Chairman,

Nathan L. Amster, Emile K. Boisot, Charles Hayden,  
James Speyer, S. Davies Warfield, Joint Re-  
organization Committee.

B. W. Jones, Secretary, 16 Wall Street, New York City.

Dated November 14, 1916.

## APPENDIX

## EXISTING CAPITAL OBLIGATIONS

(A) The following is a statement of the bonds, equipment notes and other funded obligations outstanding (as of November 2, 1916), which the plan leaves undisturbed:

Description of Debt	When Due	Amount Outstanding
<i>The Chicago, Rock Island and Pacific Railway Company:</i>		
*First and refunding mortgage gold bonds, 4%..	1934	\$111,140,000
First mortgage bonds, 6%.....	1917	12,500,000
General mortgage gold bonds, 4%.....	1988	61,581,000
Gold bonds of 1902, 4%.....	1917-18	2,988,000
Cavers Elevator Co. notes, 5%.....	1916	10,000
<i>Burlington, Cedar Rapids and Northern Railway Company:</i>		
Consolidated first mortgage bonds, 5%.....	1934	11,000,000
First mortgage bonds—Cedar Rapids, Iowa Falls and Northwestern Railway Company, 5%.....	1921	1,905,000
First mortgage bonds—The Minneapolis and St. Louis Railroad Company, 7%.....	1927	150,000
<i>Rock Island and Peoria Railway Company:</i>		
Consolidated first mortgage bonds, 6%.....	1925	450,000
<i>Choctaw, Oklahoma and Gulf Railroad Company:</i>		
General mortgage bonds, 5%.....	1919	5,500,000
First mortgage gold bonds—†Choctaw and Memphis Railroad Company, 5%.....	1949	†3,524,980
Consolidated mortgage gold bonds, 5%.....	1952	5,411,000
First mortgage gold bonds—Little Rock Bridge Company, 6%.....	1919	95,000
<i>Rock Island, Arkansas and Louisiana Railroad Company:</i>		
*First mortgage gold bonds, 4½%.....	1934	12,965,000
Little Rock and Hot Springs Western notes, 4%.....	1939	453,600
<i>St. Paul and Kansas City Short Line Railroad Company:</i>		
First mortgage gold bonds, 4½%.....	1941	12,624,640

	In hands of the public	In treasury or pledged as collateral for other loans
* Includes		
First and Refunding Bonds.....	\$94,941,000	\$16,199,000
R. I. A. and L. First Mortgage Bonds...	11,000,000	1,965,000
St. P. & K. C. S. L. First Mortgage Bonds	9,867,640	2,757,000
† Includes \$980 noninterest bearing scrip.		

EXISTING CAPITAL OBLIGATIONS—*Continued*

Description of Debt	When Due	Amount Outstanding
<i>The Chicago, Rock Island and Pacific Railway Company:</i>		
Equipment gold notes.....	\$1917	325,000
Equipment gold bonds, Series C.....	\$1919	1,590,000
Equipment gold bonds, Series D.....	\$1925	3,825,000
Equipment gold notes, Series E.....	\$1921	45,000
Equipment gold notes, Series F.....	\$1926	240,000
Equipment gold notes, Series G.....	\$1927	3,740,000
Equipment gold notes, Series H.....	\$1923	3,087,000
Receiver's Equipment Trust Certificates.....	\$1925	2,608,163
Total funded debt and equipment trust notes .....		\$257,758,383

§ Year when final installment matures. These bonds and notes mature during each year semiannually or annually in installments.

(B) The following is a statement of the funded and other obligations outstanding (as of November 2, 1916), that it is intended shall be displaced, exchanged or liquidated in reorganization:

Description	When Due	Amount Outstanding
Twenty Year Gold Debentures, 5%.....	1932	\$20,000,000
Two Year Collateral Trust Gold Notes, 6%.....	1917	7,500,000
Loan, Central Trust Company, secured by collateral, 5%.....	1917	2,500,000
Loan, Hayden, Stone & Co., secured by collateral, 4% .....	1916	1,600,000
Receiver's Certificates, Series A, 5%.....	1917	5,488,000
Receiver's Certificates, Series B, 6%.....	1917	1,100,000
Total.....		\$38,188,000

## COMPARISON OF PRESENT WITH PROPOSED CAPITALIZATION

Description of present securities	Amount of present securities	Description of securities under Plan	Amount of securities under Plan
Bonds, equipment notes and other funded obligations (not disturbed in Plan) . . . .	\$257,758,383.00†	Same as at present	\$257,758,383.00†
Debentures . . . . .	\$ 20,000,000.00	6% preferred stock	\$ 20,000,000.00
Two-year notes . . . . .	7,500,000.00		0
Collateral note . . . . .	2,500,000.00		0
Collateral note . . . . .	1,600,000.00		0
Receiver's certificates A . . . . .	5,488,000.00		0
Receiver's certificates B . . . . .	1,100,000.00		0
Stock . . . . .	74,359,722.50	{ 7% preferred stock* }	{ 29,743,889.00
Total . . . . .	\$370,306,105.50†	common stock	{ 74,359,722.50
Total fixed charge obligations . . . . .	295,946,383.00†		\$381,861,994.50†
Total stock . . . . .	\$ 74,359,722.50		257,758,383.00†
			\$124,103,611.50

Proportion of stock to fixed-charge obligations { at present . . . . . 25.12%  
under Plan . . . . . 48.14%

† Includes \$16,199,000 First and Refunding Bonds, \$1,965,000 R. I. A. & L. First Mortgage Bonds and \$2,545,000 St. P. & K. C. S. L. First Mortgage Bonds that are now pledged as collateral security for obligations of the Railway Company but that will become available, as treasury assets of the New Company, upon the payment of those obligations as contemplated in the Plan. Also includes \$212,000 St. P. & K. C. S. L. First Mortgage Bonds in the Receiver's treasury.

\* Sold for \$29,743,889 in cash.



## COMPARISON OF PRESENT WITH PROPOSED INTEREST CHARGES

Description of securities	† Amount	* Present interest charges	* Interest charges after reorganization
Bonds, equipment, notes and other funded obligations not disturbed in Plan.....	\$257,753,383	\$10,222,695.95	\$10,222,695.95
Debentures .....	20,000,000	1,000,000.00	0
Two-year Notes (interest and commissions) .....	7,500,000	525,000.00	0
Collateral Note .....	2,500,000	125,000.00	0
Collateral Note .....	1,600,000	64,000.00	0
Receiver's Certificates, Series A.....	5,488,000	274,400.00	0
Receiver's Certificates, Series B.....	1,100,000	66,000.00	0
Total .....	\$295,946,383	\$12,277,095.95	\$10,222,695.95
Decrease .....	\$2,054,400		

† Includes \$16,199,000 First and Refunding Bonds, \$1,965,000 R. I. A. & L. First Mortgage Bonds and \$2,545,000 St. P. & K. C. S. L. First Mortgage Bonds that are now pledged as collateral security for obligations of the Railway Company but that will become available, as treasury assets of the New Company, upon the payment of those obligations as contemplated in the Plan. Also includes \$212,000 St. P. & K. C. S. L. First Mortgage Bonds in the Receiver's treasury.

\* Computed on securities in hands of public on November 2, 1916.

## \* STATEMENT OF EARNINGS FOR THE TEN YEARS ENDED JUNE 30, 1916

Year	Average mileage operated	Gross income	All deductions from income other than interest			Total net income available for interest and dividends
			Operating expenses	Taxes	All other deductions	
1907	7,780	\$60,752,282	\$40,812,822	\$1,676,038	\$1,233,605	\$17,029,817
1908	7,970	58,612,830	42,136,180	1,789,895	1,555,431	13,131,324
1909	8,026	61,396,358	42,513,495	2,270,865	1,584,544	15,027,454
1910	8,044	66,443,811	48,069,369	2,876,701	1,619,985	13,377,756
1911	8,026	68,672,950	49,055,683	2,708,651	1,724,050	15,184,566
1912	8,036	65,440,098	46,759,494	2,793,315	1,544,758	14,342,531
1913	8,048	72,394,730	52,504,102	2,946,438	1,819,803	15,124,387
1914	8,205	70,512,051	51,635,820	3,315,632	3,449,075	12,111,524
1915	8,330	72,315,806	53,521,615	3,353,919	4,038,524	11,401,748
1916	8,098	76,753,309	54,543,133	3,567,851	3,372,846	15,269,479
Average per year	.....	\$67,329,422	\$48,155,171	\$2,729,930	\$2,194,262	\$14,250,058

\* Taken from report of Jacob M. Dickinson, Esq., Receiver, for the fiscal year ended June 30, 1916.

## \* ESTIMATED REQUIREMENTS TO DECEMBER 31, 1919

Jan. 1, 1917, to Dec. 31, 1917:

Equipment trust obligations.....	\$2,409,946.80	
Choctaw Serial Collateral Bonds		
(due May 1, 1917).....	1,494,000.00	
Little Rock Bridge First Mortgage		
6s (due July 1, 1917).....	20,000.00	
First Mortgage 6% Bonds (due		
July 1, 1917) .....	12,500,000.00	
C. & R. I. Elevator First Mortgage		
5s (due Oct. 1, 1917).....	50,000.00	
Additions and betterments.....	3,500,000.00	
		<hr/>
		\$19,973,946.80

Jan. 1, 1918, to Dec. 31, 1918:

Equipment trust obligations.....	\$2,084,946.80	
§ Choctaw Serial Collateral Bonds		
(due May 1, 1918).....	1,494,000.00	
Little Rock Bridge First Mortgage		
6s (due July 1, 1918).....	20,000.00	
C. & R. I. Elevator First Mortgage		
5s (due Oct. 1, 1918).....	50,000.00	
Additions and betterments.....	3,500,000.00	
		<hr/>
		7,148,946.80

Jan. 1, 1919, to Dec. 31, 1919:

Equipment trust obligations.....	\$2,084,946.80	
§ Little Rock Bridge First Mort-		
gage 6s (due July 1, 1919).	55,000.00	
Choctaw, Oklahoma & Gulf Gen-		
eral Mortgage 5% Bonds (due		
Oct. 1, 1919).....	5,500,000.00	

\* In this statement there is not included any requirement of the new company based on any claim against it on account of any liability, or alleged liability, renounced or disallowed by the receiver.

§ Final installment.

C. & R. I. Elevator First Mortgage

5s (due Oct. 1, 1919).....\$	50,000.00
Additions and betterments.....	3,500,000.00
	<hr/>
	\$11,189,946.80
	<hr/>
	\$38,312,840.40

Besides the above estimates for additions and betterments, it is intended that the new company shall expend a substantial amount for rehabilitation.

ESTIMATED RESOURCES TO DECEMBER 31, 1919

† Estimated balance of cash provided for in reorganization, after paying all short term loans, receiver's certificates and expenses.....	\$8,000,000
Estimated face amount of first and refunding bonds available upon the consummation of the plan, the making of the additions and betterments above specified and the retirement of the Choctaw serial collateral bonds due in 1917 and 1918, the first mortgage 6% bonds due in 1917 and the Choctaw, Oklahoma & Gulf general mortgage 5% bonds due in 1919.....	54,174,000
†† Face amount of St. Paul & Kansas City Short Line R. R. Co. first mortgage bonds.....	2,757,000
†† Face amount of Rock Island, Arkansas & Louisiana R. R. Co. first mortgage bonds.....	1,965,000

*Debts of and Claims Against Railway Company*

Certain of the more important claims existing or asserted against the Railway Company, and/or, its receiver, or hereafter to become due, are below enumerated. The list does not in-

† In addition, the receiver will turn over to the new company such funds as may remain undisposed of in his hands at the time of the consummation of the plan. These funds will be available for the general corporate purposes of the new company, after deducting therefrom such amounts as the new company may be required to pay in respect of renunciations and disallowances during the receivership.

†† Additional bonds may be issued under these mortgages for improvements, etc., on the properties mortgaged.

clude amounts claimed for damages for personal injuries or freight claims or amounts claimed for damages in litigations. The joint reorganization committee has endeavored to procure full and correct figures, but it assumes no responsibility whatsoever for the completeness or correctness of the information given below; nor is the fact that any claim is below listed (or is referred to as a liability) to be deemed in any sense an admission of the validity thereof, but every such claim will be contested, compromised, settled, paid or otherwise dealt with as the receiver, or the new company or the joint reorganization committee or other proper authority may determine. The word "liability" or "liabilities," wherever below used, is intended to mean "asserted liability" or "asserted liabilities," as the case may be. The claims above referred to and asserted to be already due or to become due on or prior to January 1, 1917, include the following:

CLAIMS FOR WHICH A PREFERENCE IS ASSERTED, ETC.

- (1) Estimated at about.....\$200,000

UNPAID PROPORTION OF JOINT LIABILITIES RENOUNCED BY RECEIVER

- (2) Trinity & Brazos Valley Ry. Co. Equipment Notes  
 "A" (principal and interest to Oct. 1, 1916)....\$ 40,313
- (3) Galveston Terminal (bond interest to Sept. 1,  
 1916) ..... 49,770
- (4) Peoria Railway Terminal (estimated proportion  
 claimed to be payable by Railway Company of  
 bond interest to Jan. 1, 1917)..... 5,000

UNPAID FIXED CHARGE LIABILITIES RENOUNCED BY RECEIVER

- (5) Consolidated Indiana Coal (bond interest to Dec.  
 1, 1916)\* .....\$250,000

OTHER RECEIVER'S RENUNCIATIONS

- (6) Boston Office (gross rent to Oct. 1, 1918).....\$ 18,125
- (7) Portland Office (gross rent to Dec. 1, 1918)..... 6,200

\* The Railway Company has a large investment in this company, which is in the hands of a separate receiver, who has issued \$100,000 receiver's certificates which are now outstanding.

## UNPAID OTHER LIABILITIES DISALLOWED BY RECEIVER

(8) Consolidated. Indiana (sinking fund to June 1, 1916, estimated)* .....	\$ 51,750
(9) St. Joseph Union Terminal (rental to Jan. 1, 1917) .....	62,500
(10) Harlem-Rushville trackage (to Dec. 31, 1916), about .....	132,000
(11) Keokuk & Des Moines rental, say.....	50,000
(12) Trinity & Brazos Valley Ry. Co.—one-half of interest to Nov. 1, 1916, on total cost †.....	496,556

## AGREEMENT OF REORGANIZATION

An agreement entered into as of November 14, 1916, by and between Seward Prosser, Nathan L. Amster, Emile K. Boisot, Charles Hayden, James Speyer and S. Davies Warfield (hereinafter collectively termed the "committee"), parties of the first part; and such of the holders of stock of the Chicago, Rock Island & Pacific Railway Company (hereinafter called the "Railway Company"), as shall become parties hereto in the manner herein provided (who are hereinafter collectively termed "depositing stockholders"), and such of the holders of twenty-year five per cent. gold debentures of the Railway Company (hereinafter termed the "debentures"), and such of the holders of certificates of deposit issued by Bankers Trust Company for debentures deposited under the deposit agreement dated July 19, 1914, as shall become parties hereto in the manner herein provided (who are hereinafter collectively termed "depositing debenture holders"), parties of the second part (all the parties of the second part being hereinafter sometimes called "depositors").

\* The Railway Company has a large investment in this company, which is in the hands of a separate receiver, who has issued \$100,000 receiver's certificates which are now outstanding.

† Inasmuch as the semiannual interest installments have not been paid during the receivership, notice of precipitation of the maturity of the principal, about \$5,517,000 was served upon the Railway Company in May, 1916. The committee is advised that this claim is unenforceable.

The Railway Company has outstanding \$20,000,000 face amount of the debentures, whereon the interest matured January 15 and July 15, 1916, has not been paid, and the Railway Company has defaulted upon the debentures and under the indenture dated January 17, 1912, whereunder the same were issued.

Certain of the debentures are represented by the committee named in the deposit agreement dated July 19, 1915, above referred to, and such committee is hereinafter referred to as the "debenture committee." Certain of the holders of stock of the Railway Company are represented by a committee consisting of Messrs. Charles Hayden and others, which committee is hereinafter referred to as the "Hayden committee." Certain other of said stockholders are represented by a committee of which Messrs. Nathan L. Amster and others are members, which committee is hereinafter termed the "Amster committee."

The depositors desire that a plan of reorganization substantially as hereinbefore set forth be carried into effect, and have authorized the committee in its discretion to consummate such plan.

In consideration of the premises and of the advantages which will result to the depositors, and of the conditions and promises hereinafter contained and of other good and valuable consideration, and for the purpose of carrying out said plan in whole or in part, and whether modified or amended, the parties hereto have agreed and do hereby severally agree, and each depositing stockholder and each depositing debenture holder has agreed and does hereby agree with each of the other depositing stockholders and depositing debenture holders and with the committee, as follows:

1. The depositing stockholders and the depositing debenture holders jointly and severally hereby assent to and accept all the provisions of said plan and of this agreement. Said plan is hereby adopted and approved and shall be deemed a part of this agreement with the same force and effect as though embodied herein. Said plan and this agreement shall be read as

parts of one and the same instrument, and every depositor shall be bound by both.

2. Holders of stock of the Railway Company may participate in said plan and in this agreement, and will become parties thereto, by depositing the certificates representing the shares of stock held by them, accompanied by instruments of transfer duly executed in blank and by all requisite tax stamps, with either of the depositaries under this agreement, or with any agent or agents appointed by either of said depositaries with the consent and approval of the committee to receive such deposits of stock for such depositary, and by making to either of said depositaries the payments required by said plan from time to time and as called for. Upon making each such payment, each depositing stockholder shall present his certificate of deposit (issued as hereinafter provided) to the depositary for the notation thereon by the depositary of the making of such payment.

3. Holders of debentures not heretofore deposited with the debenture committee may participate in said plan and in this agreement, and will become parties thereto, by depositing their debentures, accompanied by all coupons maturing January 15, 1916, and thereafter, with either of the depositaries hereunder or with any agent or agents appointed by either of said depositaries with the consent and approval of the committee to receive such deposits of debentures for such depositary. The debenture committee is about to give notice, pursuant to the deposit agreement dated July 19, 1915 (between holders of twenty-year five per cent. gold debentures of the Railway Company and the debenture committee), of the approval by the debenture committee of the plan and of this agreement and intends to deposit with one of the depositaries named in the plan (which deposit may be subject to charges and liens existing thereon for debenture committee compensation, expenses, disbursements and liabilities and for advances, if any, upon the coupons matured January 15, 1916) subject to the terms and provisions of the plan and of this agreement, all



debentures on deposit with Bankers Trust Company, as depositary under the deposit agreement dated July 19, 1915, with respect to which the right of withdrawal granted in said deposit agreement shall not be promptly exercised as provided in said deposit agreement; and, upon the making of such deposit, every holder of a certificate of deposit issued under or pursuant to said deposit agreement dated July 19, 1915, shall conclusively be deemed irrevocably to have assented to the plan and to this agreement and shall be bound by all the terms and provisions of the plan and of this agreement without further act or notice and shall be entitled to all the benefits of the plan and of this agreement without the issuance of new certificates of deposit. The form of certificate of deposit now in use by the debenture committee and outstanding in respect of debentures deposited under said deposit agreement may be utilized for future deposits of debentures hereunder by stamping same with an appropriate legend indicating that the debentures in respect of which such certificates of deposit were issued have been deposited under, and that the holders of such certificates of deposit are bound by all the terms and provisions of said plan and of this agreement; but if the committee shall deem it desirable so to do it may cause to be prepared and issued new certificates of deposit in respect of any deposited debentures or in respect of any of said certificates of deposit heretofore issued by Bankers Trust Company, as depositary under said deposit agreement. Upon such deposit under the plan, by the debenture committee, of debentures, the committee shall become responsible for and shall assume each and every the responsibilities and indebtedness of the debenture committee, and the debenture committee, except as provided in Article Seventh hereof, shall be under no further duty or obligation in respect of debentures so deposited.

4. Bankers Trust Company, of New York, N. Y., and First Trust and Savings Bank of Chicago, Ill., are hereby severally appointed depositaries under said plan and this agreement. The depositaries will issue to depositing stockholders (and, if

the committee shall so direct, to depositing debenture holders and to the holders of certificates of deposit of Bankers Trust Company in respect of debentures) certificates of deposit, issued subject to the terms of this agreement. The holders of such certificates of deposit and all persons claiming by, through or under the persons named in such certificates of deposit, shall be held to have assented to this agreement as if they had severally subscribed to, acknowledged and delivered the same. Said certificates of deposit shall be transferable in such manner as the committee shall approve, and upon such transfer all rights and obligations of the depositors in respect of the securities represented by such certificates of deposit shall pass to the transferee, who shall be substituted in place of the prior holders and be subject to this agreement. All such transferees, as well as the original holders of certificates of deposit hereunder, and all persons claiming by, through or under said holders or transferees (and all holders of certificates of deposit of Bankers Trust Company, subject to the said plan and this agreement), shall be included within the terms "depositing stockholders," "depositing debenture holders" and "depositors" when used herein. Each such certificate of deposit not at the time registered in a name may be treated by the committee and the depositaries as a negotiable instrument, and the holder thereof for the time being and the registered holders of registered certificates may be considered and treated as the absolute owner thereof and of all the rights of the original depositor of every character, and neither the committee nor either of the depositaries shall be affected by any notice to the contrary. The committee may take such action as it may deem proper for the listing upon the New York Stock Exchange or any other exchange of certificates of deposit.

5. The committee is hereby vested under the terms of this agreement with the legal title to all the stock, debentures and coupons which may at any time be deposited hereunder, and the depositors agree that the deposit of the said stock, deben-

tures and coupons, transfers and assigns to and vests in the committee complete and absolute title to the said stock, debentures and coupons, with the same force and effect as if the committee were the absolute owner thereof. They further agree, at any time upon request of the committee, to execute any and all instruments of transfer, assignments or writings requisite or required by the committee further to evidence the vesting in the committee or its nominees of the legal title to the said stock, debentures and coupons deposited hereunder.

6. In addition to vesting in the committee the complete and absolute title to the stock, debentures and coupons deposited hereunder, the depositors hereby further constitute and appoint the committee their only and exclusive attorneys in fact, and hereby authorize and empower the committee, in the name of the depositing stockholders or in the name of the depositing debenture holders, or both, or in the name of the committee or in the name of any other person or persons, firm or firms, or corporation or corporations, as the committee may deem proper, to institute, maintain or take, or cause to be instituted, maintained or taken, or to intervene in or become party to such actions or proceedings at law or in equity or otherwise, and in all matters or proceedings to give such directions, make such requests and demands, file such protests and execute such papers, authorizations, consents, powers of attorney, or other instruments, all as will, in the judgment of the committee, tend to protect the interests of the depositors and to enforce the rights and the security belonging to or provided by said stock, debentures and coupons and the said indenture under which the debentures were issued. The committee is hereby given full power to substitute or to revoke any or all such powers of attorney or other instruments which it may execute, and to adjust, compromise, settle and discontinue any or all such actions or proceedings, or to institute others, and to adjust, compromise, settle and discontinue the same; and the depositing stockholders and the depositing debenture holders further give and grant unto the committee full power and

authority to do and perform every act and thing requisite and necessary to be done in its judgment in and about the premises, as fully to all intents and purposes as the depositing stockholders or the depositing debenture holders might or could do individually, jointly or otherwise, and to exercise each and every right, power and privilege belonging to, conferred upon or vested in the depositing stockholders or the depositing debenture holders by the stock, debentures and coupons deposited hereunder or by the indenture under which the debentures were issued, or otherwise as the case may be, and to represent the depositors in respect thereof as fully as though the depositing stockholders and the depositing debenture holders, respectively; were acting in person; the depositors all hereby ratifying and confirming all that the committee or its appointees or substitutes may lawfully do or cause to be done by virtue hereof.

In addition, the committee shall have, and is hereby given, the right and power:

To declare or cause to be declared due and payable the principal of the debentures, or any part thereof, and to demand payment of the principal thereof or of the interest thereon, or both, and to annul any such declaration or demand, and to waive or suspend any default in said debentures or coupons under said indenture; to institute or cause to be instituted any and all actions, suits or proceedings at law, in equity or otherwise which, on advice of counsel, the committee may deem necessary or proper to secure a sale and conveyance, assignment or transfer of the railways and properties of the Railway Company, or to procure such sale or sales and conveyances, assignments and transfers by negotiation or agreement or otherwise, as it shall deem to be expedient; to procure the Railway Company or any subsidiary, affiliated or controlled corporation of the Railway Company to take any corporate action deemed by the committee to be desirable or requisite for the purpose of facilitating the consummation of said plan and this agreement or any part thereof; to ascertain and

enforce the respective rights of the depositing stockholders and the depositing debenture holders, and to protect their interests in any way that the committee may deem necessary or advisable; to request and direct the trustee under said indenture to exercise the powers conferred upon such trustee, if and whenever in the judgment of the committee such action be necessary or desirable; and the depositing debenture holders hereby expressly authorize the committee to exercise each and every power and right conferred by said indenture upon the holders of debentures issued thereunder, in respect of all matters whatsoever, and to request any trustee or any substituted trustee to set in motion or suspend any provision of the said indenture; to vote or consent in respect of all shares of stock deposited hereunder; to investigate the physical and financial conditions of the Railway Company and of its subsidiary, affiliated or controlled companies and the accounts and affairs thereof and of the properties and securities owned by the Railway Company or by any or all of said subsidiary, affiliated or controlled companies, and the relation of the Railway Company with any of its subsidiary, affiliated or controlled companies, all as the committee may deem advisable; to institute or cause to be instituted any and all actions, suits or proceedings at law, in equity or otherwise which, on the advice of counsel, the committee may deem necessary or proper to procure an accounting from any officer, director or employe of the Railway Company, or of any of its subsidiary, affiliated or controlled companies; to examine into any pending or contemplated litigation against any present or former officers, directors or employes of the Railway Company and to consent to or to facilitate any compromise, adjustment or settlement of any such litigation, by whomsoever instituted, upon such terms as shall commend themselves to the committee in its discretion; to inspect or examine or cause to be inspected and examined the books and accounts of the Railway Company and/or of any of its subsidiary, affiliated or controlled companies, and to demand or cause to be demanded an accounting

from the Railway Company of the operation and management of the property of the Railway Company and of its subsidiary, affiliated or controlled companies and of the earnings derived therefrom, and of the indebtedness contracted in their respective names; to apply for or join with others in applying for or consenting to the appointment or removal of any receiver or receivers, and for the termination of any receivership; to enter into any agreement or arrangement for decrees or orders for facilitating or hastening the course of litigation or tending towards or deemed by the committee in its discretion likely to promote the consummation of said plan; to cause to be incorporated a new company, or to select an existing company or the Railway Company, for the purpose of reorganizing it or taking title to and acquiring any railways and properties of the Railway Company sold, conveyed or retained pursuant to said plan and this agreement (such new or selected company being herein termed the "new company"); to buy, sell, acquire and otherwise deal in any stock or any debentures of the Railway Company or of the new company; and to purchase or to pay, compromise or settle at any time or times, and on such terms as it shall deem proper, any secured or other indebtedness or obligation of, or claim against, the Railway Company or the new company, or any of the subsidiary, controlled or affiliated companies, or any claims or demands or securities or property deemed by the committee important or advisable to be acquired in connection with the plan or any receiver's certificates or obligations issued, or liabilities incurred by receivers or any claims or demands or stock which the committee, in its discretion, may deem to be expedient and in the interest of the reorganization to purchase or to pay, compromise or settle; to participate in or to cause the Railway Company or the new company to participate in any plan or agreement or reorganization of any corporation in which the Railway Company or the new company has or may have an interest; to give any and all bonds of indemnity or other undertakings, and therefor to charge by pledge or otherwise the

deposited debentures and stock, the securities of the new company, and any property purchased and any securities issued or to be issued or any part thereof; to hold any property or franchise purchased by or for the committee in its name or in the name of any person or persons, firm or firms, corporation or corporations, approved by it for the purposes of said plan and of this agreement and to apply upon the purchase price thereof the deposited debentures, or any of them, or the deposited stock, or any cash or other property at any time held by or subject to the control of the committee; to consent to any corporate action by the new company; to sign and file any written consent required or permitted by law to be signed, and, as the owner thereof, to use any or every deposited debenture and share of stock and the securities of the new company and any new securities issued to or for the benefit of the committee or held by it or for its benefit or any cash or other property for the purpose of carrying out said plan and this agreement; to fix, limit, enlarge and determine the time within which the depositors or any of them may deposit debentures or stock or the Railway Company or become parties hereto or make payments under said plan or otherwise avail themselves of the provisions hereof, and in its discretion, generally or in particular instances, to accept payment of any installment or installments payable under the plan on dates other than those therein specified, on such terms and conditions, if any, as it may prescribe; to incur all expenses which the committee may deem judicious, including the expense of underwriting or procuring the underwriting or sale or guaranty of any securities of the new company or of any company formed or utilized in connection with the consummation or the attempted consummation of said plan and this agreement, and including commissions to any syndicate or syndicates that it may deem advisable to form or cause to be formed or deal with in order to effectuate the purposes of said plan and this agreement; to waive or enforce any or all of the rights of the depositing stockholders and depositing deben-

ture holders; to take or cause to be taken such steps as the committee may deem advisable in connection with the formation of the new company or any new company or companies, and the issue and governmental approval of its or their securities, or to agree with any other party or parties as to the formation thereof, and to do such acts in the name of the depositors, or otherwise, as may, in the judgment of the committee, be necessary or expedient for transferring to any such new company the property and assets or any part thereof of the Railway Company or any other property or assets; to borrow any sum or sums of money from any persons, firms or corporations whatsoever (including the depositaries or any of the members of the committee individually or the firms or corporations of which they or any of them may be members, officers, directors or stockholders) at any time or times, and to make and issue the promissory note or notes of the committee in the amount of any such borrowing, and for any purpose of said plan or of this agreement (including the payment of any expenses, obligations or liabilities of the committee incurred or assumed by it or any expenses, obligations or liabilities of the new company or the Railway Company), or for any other purpose or purposes deemed necessary or expedient by the committee; and to use and apply all funds so borrowed or advanced for any or all of the purposes herein mentioned; as security for any sum or sums of money borrowed by the committee, or otherwise, for the purposes of said plan or of this agreement, to pledge and hypothecate all or any of the shares of stock or debentures held by the committee or by any one in its interest, the securities of the new company or any other securities issued or to be issued, to and with the lender or lenders thereof; and to take or enter into any action, contracts, agreements or adjustments which the committee may deem conducive to the best interests of the depositors, including contracts for the sale of first and refunding bonds of the Railway Company, or of any other securities, and in and by such actions, contracts, agreements or adjustments, in the dis-



cretion of the joint reorganization committee, to bind the new company.

Anything which, anywhere in said plan or in this agreement, it is provided that the committee may do or allow to be done, it may do or allow to be done by or through such agents or agencies as it may determine, or by or through others with its approval or consent or acquiescence, or it may contract with any person, firm or corporation that such shall be done or be permitted to be done.

7. The committee shall be the sole and final judge as to whether and when sufficient assents and deposits shall have been received, and whether other conditions warrant it in declaring said plan operative, and, in attempting to carry the same or any part thereof into effect, the committee may supply any defect or omission or reconcile any inconsistency in said plan and in this agreement, in such manner and to such extent as shall be deemed by it necessary or expedient to carry out the same properly and effectively, and it shall be the sole judge of such necessity or expediency.

Before declaring the plan operative, the committee may exercise the powers and authority upon it conferred by this agreement, in whole or in part, if it shall deem it advisable to do so; it shall have power, whenever it shall deem it proper, to alter, amend, modify, depart from, or abandon said plan and this agreement or any part thereof in any respect, or it may substitute a new plan or a new agreement or both; it may at any time or times after any such partial abandonment, or after any modification, restore to said plan and this agreement any abandoned part or parts theretofore by it discarded and reject any such modification or substitution or any part thereof, and it may seek to carry the said plan and this agreement into effect as fully as if such part or parts had not been abandoned or such modifications made; it may also attempt to carry said plan and this agreement into effect rather than to abandon or modify the same, even though it be manifest or probable that, if consummated, said plan and this agreement must depart

from the original plan or this agreement or from some part thereof; any change or modification when made by the committee shall thereupon become and be a part of said plan and this agreement. In case, however, of intentional change or modification of, or departure from, or substitution of another plan for said plan and this agreement, which other plan, in the judgment of the committee, shall materially and adversely affect the depositors or any thereof, such proposed material change, modification, departure or substitution shall be forthwith submitted to the debenture committee, the Amster committee and the Hayden committee. If said three committees shall assent to such proposed material change, modification, departure or substitution, a statement thereof shall be filed with the depositaries under said plan and notice of the fact of such filing shall be given as hereinafter provided in Article Fifteenth of this agreement. Any holder of a certificate of deposit may, within thirty days after the first publication in the cities of New York and Chicago of such notice of change, modification, departure or substitution, file with either of the depositaries notice in writing that such holder dissents from such change, modification, departure or substitution. If within such period of thirty days from the first publication in the cities of New York and Chicago of said notice, the holders of outstanding certificates of deposit representing thirty per cent. in principal amount of the deposited stock or thirty per cent. in principal amount of the deposited debentures shall so file notice of dissent from any such change, modification, departure or substitution, such change, modification, departure or substitution shall not become effective; but the committee may thereafter from time to time adopt or approve other changes or modifications or departures or substitutions from the plan or supplements thereto or other plans or agreements, and give notice thereof as aforesaid. Dissenting certificate holders will be allowed, in the event that any such change, modification, departure or substitution shall become effective within thirty days after the first publication of notice, as provided in Article

Fifteenth, of the fact of the adoption of such material change, modification, departure or substitution, to surrender their certificates of deposit and withdraw the debentures or stock, as the case may be, represented thereby, but only upon paying their pro rata share, as determined by the committee, of compensation, expenses, disbursements and liabilities, and upon paying the amount (with interest) of any advance made thereon. All changes or modifications made by the committee, as herein provided, shall be a part of said plan and of this agreement, and all provisions and references concerning said plan shall apply to the plan as so changed or modified.

Anything herein or in said plan contained to the contrary notwithstanding, the committee shall have full power and authority, by unanimous vote of the members of said committee, to make any settlement, compromise or arrangement whatsoever that may, in its discretion, be deemed advisable with the holders of all or part of the first and refunding mortgage gold bonds of the Railway Company, or with any committee or committees representing such holders, or any thereof, or with the trustees of said first and refunding mortgage, or with the holders of any other secured or unsecured obligations of or claims against the Railway Company, or any of its subsidiary or controlled corporations; and solely for the purposes of any such settlement, compromise or arrangement new or additional securities (either bonds, stocks or otherwise) may be issued, and any such new or additional securities may bear the same or different rates of interest or dividends as or from those so settled, compromised or arranged for; and no such settlement, compromise or arrangement shall, for the purposes of this Article Seventh, be deemed a modification of said plan or of this agreement required to be submitted to or approved by the depositing stockholders and depositing debenture holders or by the debenture, Hayden and Amster committees.

This agreement is in all respects to be liberally construed so as to enable the committee to carry into effect the plan hereinbefore set forth or as so amended, changed, modified or

departed from. In case the committee shall finally abandon the entire plan, either before or after the same shall have been declared operative, or in case the committee shall not, prior to November 1, 1917, declare said plan, or any such modified or substituted plan, operative, or in case of the exercise by any depositing stockholder or debenture holder of any right of withdrawal herein specifically granted, the debentures and the stock deposited hereunder, or their proceeds or any certificates, securities, claims or other property representative thereof then under the control of the committee, shall be delivered or transferred to the several holders of certificates of deposit in amounts representing their respective interests, upon surrender of their respective certificates, and upon payment to either of the depositaries for account of the committee of (a) a fair contribution, as determined by the committee, toward the expenses and disbursements of the committee incurred to date of such surrender, not exceeding, however, for such expenses, including the compensation of the committee, two per cent. of the par amount of the securities to be withdrawn, and (b) at the election of the committee such sum as the committee, in its sole discretion, shall fix as his ratable proportion of all other indebtedness, obligations and liabilities of the committee. Provided, nevertheless, that in case the plan shall be abandoned without having been declared operative, the debentures which may have been deposited by the debenture committee with the committee shall be redelivered to the debenture committee to be again held by it under said deposit agreement dated July 19, 1915, subject to the payment of the compensation, expenses, disbursements and liabilities of the debenture committee and the amount of any advance or payment, including all interest thereon, made in respect of the coupons matured January 15, 1916, appurtenant to the debentures, and the amount (with interest) of any other advance in respect of interest thereon, and also to the payment of such proportion of the compensation, expenses, disbursements and liabilities of the committee as may be determined by the committee to be fairly apportion-

able to the deposited debentures so redelivered to the debenture committee (not exceeding, however, \$20 in respect of each and every \$1,000 debenture); but no part of the compensation, expenses, disbursements and liabilities of the Amster committee, or of the compensation, expenses, disbursements and liabilities of the Hayden committee, respectively, as such, shall be apportionable or apportioned to such debentures.

The committee may, in its discretion, fix or limit (within the limits aforesaid) the amount payable to it by the holders of certificates of deposit dissenting from any modification of said plan, or, in the event of the abandonment thereof, the amount payable as and for the compensation, expenses, disbursements and liabilities of the committee.

In case of the final abandonment of the entire plan, any moneys paid to the committee pursuant to the provisions of said plan and of this agreement, and any securities, claims or property acquired therewith, or the proceeds thereof, remaining after deducting therefrom the share of disbursements, liabilities and expenses incurred by, and its compensation of, the committee, the counsel, depositaries and agents, may be distributed as it, in its sole discretion, shall deem to be equitable among the persons, firms and corporations who or which are or may be holders of certificates of deposit issued hereunder or otherwise subject hereto. The committee shall not, however, be liable for the loss of any such money or property by it disbursed or applied for the purposes of this agreement nor for the depreciation in value of any property or securities by it acquired or received; and the depositing stockholders who shall have made payments pursuant to said plan shall have no claim for the repayment of any such moneys, except to the extent of their respective shares (as apportioned by the committee) of such moneys remaining in the hands of the committee or under its control after payment of such disbursements, expenses, liabilities and compensation.

The committee, its successors and assigns, for any disbursements or expenditures made or liabilities incurred by or in

respect of the reorganization or the carrying out or furtherance thereof, and for its compensation and the compensation of such persons, firms or corporations (including the depositaries) as it may see fit to employ, shall have a lien upon all the deposited debentures and stock and upon all property and securities acquired in the course of the reorganization and, until their delivery or distribution to the depositors, upon the new securities contemplated by said plan.

8. Any action contemplated in said plan or authorized by this agreement may be taken or performed whenever and as often as the committee, in its uncontrolled discretion, shall deem advisable. Any such action may be taken by the committee or by any one approved by it at any time when it shall deem the reorganization advanced sufficiently to justify such course, and as it may be necessary or expedient the committee may defer or permit to be deferred the performance of any provisions of said plan or of this agreement, or it may devolve such performance on the new company and may cause the new company to pay any indebtedness authorized or incurred by the committee or otherwise in furtherance of the plan or to make or assume any obligations or liabilities which, in the judgment of the committee, may be necessary or expedient to carry out said plan or this agreement.

The committee may, in its discretion, set apart and hold in trust, or permit to be set apart and to be held in trust, or may place in trust or permit to be placed in trust, any part of the new securities to be issued and any cash which may be received from sales of new securities or otherwise, as it may deem suitable for the purpose of securing the application thereof for any of the purposes of said plan or of this agreement.

The committee may employ depositaries, subdepositaries, counsel, agents and all necessary assistants, and may incur and discharge any and all expenses by it deemed reasonable for the purposes of said plan or for carrying out or attempting to carry out the same, including the compensation and expenses of counsel and engineering, accounting and other experts,

whether employed by it or not, and all compensation and expenses in any way connected with the receivership; also all compensations and expenses of the depositaries, subdepositaries and agents, and all expenses in connection with the preparation of said plan and this agreement, the issue and governmental approval of securities, the incorporation of any companies, and all legal and other expenses in any manner connected with said plan or this agreement, or which it may deem expedient to incur in undertaking to promote any of the purposes thereof. The committee shall be the sole judge of the propriety and expediency of any and all compensation and expenses and of the amount thereof.

The committee may prescribe or approve the form and terms of all charters, regulations and by-laws of the new company, and of any corporations that may be utilized in the reorganization, and of all certificates of stock, bonds, notes and other securities at any time to be issued, and all mortgages and all other instruments at any time to be executed in furtherance of said plan and this agreement, and may make with any person or persons, firm or firms, corporation or corporations, syndicate or syndicates, any contracts or agreements in relation to or in any wise affecting the same; provided, however, that (insofar as may be permitted by law) the stock of the new company to be issued under said plan and this agreement shall (subject to the right of change or modification exercisable by the committee in the manner herein provided), have the respective rights and priorities appearing in the plan hereinbefore set forth, and that each share of the stock of the new company shall be entitled to one vote on all matters properly coming before stockholders for action excepting the election of directors, and that at elections of directors each stockholder shall be entitled to as many votes as shall equal the number of his shares multiplied by the number of directors to be elected and may cast all of such votes for a single director or may distribute them among the number to be voted for or any two or more of them as he may see fit.

The charter or certificate of incorporation shall also provide that the whole board of directors shall be elected annually. The committee may likewise, in respect of any and all securities other than those issuable to depositors hereunder, create and provide for all voting and other trusts deemed by it to be expedient, and may nominate trustees thereunder. It shall have power to make equitable provision for any instance of lost or destroyed debentures, coupons or stock certificates or certificates of deposit, and to recognize and admit to participation in said plan and this agreement all stock and all debentures of the Railway Company issued or purporting to be issued under said indenture dated January 17, 1912, whether or not they or part thereof shall have been or shall be adjudged to be illegal or invalid; it shall have power to provide for or make and cause to be made such issues of scrip as may be necessary properly to represent any fractional interest in the new securities, and to such extent as it shall deem necessary it may distribute such scrip to the depositing stockholders and depositing debenture holders, or may, in its discretion, settle for and adjust any such fractional interest in cash and credit or pay such cash to the depositors in lieu of distributing to them such scrip or securities. In case it shall deem it advisable for any reason, the committee is authorized to issue or to cause to be issued temporary or interim certificates to represent the new securities or any of them. The committee may dispose of such of the new securities to be created and issued under said plan as may not be or become distributable under said plan and this agreement to persons, firms or corporations holding certificates of deposit issued hereunder or otherwise subject hereto, by the sale or delivery or transfer of such new securities to such persons, firms, corporations or syndicates as the committee may select for that purpose, and upon such terms and conditions as it may in its uncontrolled discretion determine.

9. The committee as at any time constituted, and notwithstanding any existing vacancy shall have all the powers, rights and interests of the committee as originally formed; it may



from time to time add to its members by electing, by the votes of at least five-sixths of its members, as from time to time constituted, an additional member or additional members, and the member or members so elected shall have all the powers of, and together with those herein named or their successors shall constitute the committee under this agreement, with the like force and effect as if they were specifically named herein as parties of the first part hereto. Any member of the committee may resign by filing written notice of his resignation with the secretary of the committee or with either depository. In case at any time a vacancy shall occur in the committee by death, resignation or otherwise, such vacancy shall, with all convenient speed, be filled by the vote of a majority of the remaining members of the committee by the selection and appointment of a successor to fill such vacancy, but only from among candidates nominated as follows:

On the nomination of the debenture committee, if the vacancy be that of Seward Prosser, Emile K. Boisot or James Speyer, or any successor to any of them;

On the nomination of the Amster committee, if the vacancy be that of Nathan L. Amster or any successor to him;

On the nomination of the Hayden committee, if the vacancy be that of Charles Hayden or any successor to him, and

On the joint nomination of said Amster committee and said Hayden committee, if the vacancy be that of S. Davies Warfield or any successor to him;

and such successor shall have and may exercise all the powers and authority under this agreement previously possessed by the person in whose place he shall have been elected and to the same extent and effect as if he were herein named as one of the committee.

The committee may act (except as otherwise herein provided) by a majority of its members either at a meeting, or in writing, or by cable or telegraph without a meeting.

Any member of the committee may vote or act by a general proxy, subject to change or revocation, or by a proxy for any particular meeting or meetings or for any specific purpose or purposes (and such proxy may, but need not be, another

member of the committee); and the vote or act of such proxy shall be as effective as the vote or act of such member appointing such proxy. The authority of any such proxy may be in writing or by cable or by telegraph or in any other form satisfactory to the committee.

10. The committee undertakes to endeavor to carry out said plan either in its original form or as modified, altered or departed from, but neither the committee nor the members thereof nor the depositaries assume any personal responsibility for carrying out said plan and this agreement or any part of either, nor for the results of any steps taken or acts done for that purpose, nor shall the committee or the members thereof or the depositaries hereunder be personally liable for any act or omission of said committee, or of said depositaries or of any agent or employe selected by them or either of them, nor for any error of judgment or mistake of fact or law, nor for any acts except for its or their own individual wilful malfeasance, nor shall any member of the committee be personally liable for acts or defaults of any other member thereof or of any depositary.

11. The members of the committee shall not be considered or taken, as between themselves, as partners, nor shall the committee or any of its members be taken or considered as partners with the depositors or any of them, nor shall the depositing stockholders or depositing debenture holders be taken or considered as partners with each other or with the committee or with any of the members thereof, either as between themselves or as to third parties. All acts performed, and obligations and liabilities incurred by the committee, both as to the depositors and as to any person or persons, firm or firms, corporation or corporations, dealing or contracting with the committee, shall be deemed and considered to be acts of said committee as a committee, and all or any person or persons, firm or firms, corporation or corporations, dealing or contracting with said committee shall look alone to the securities deposited hereunder for the satisfaction and discharge of all

obligations and liabilities so contracted or incurred by the committee, and shall not hold or attempt to hold the committee or any member thereof, personally or individually, liable or responsible therefor.

12. The committee shall be entitled to compensation for its services, the same to be fixed by it. The committee shall have the right to form or procure the formation of any syndicate or syndicates which it may deem necessary or advantageous for carrying out the purposes, or any thereof, of said plan or of this agreement, and any of the members of the committee, or any corporation, partnership or association in which they or any of them are in any manner interested or with which they or any of them are in any manner connected, may act as members or managers of such syndicate or syndicates and may be pecuniarily interested therein. The terms and compensation of any such syndicate shall be fixed by the committee, and as so fixed shall be binding and conclusive upon the depositors. The syndicate managers may receive compensation as such, and any members of the firms acting as syndicate managers who may be members of the committee shall receive also compensation as members of the committee. Members of the committee, or the depositaries hereunder, may make deposits of securities hereunder, and shall be entitled to the same benefits as any other depositor, and the members of the committee, and any corporation, partnership or association in or with which they or any of them may be in any manner interested or connected, or the depositaries hereunder, or any depositor, without accountability in respect thereof, may be or become pecuniarily interested in any bonds, stocks, contracts, property or matters which said plan or this agreement concerns or to which it relates, including participation in or under any syndicate agreement, whether or not mentioned in said plan as syndicate managers, members, subscribers or otherwise.

Any direction given by vote of the committee or by a writing signed by a majority of the committee shall be full and sufficient authority for any acts of any depositary hereunder, or of any subdepository or custodian, or any committee

or agent. The depositaries hereunder shall incur no liability for anything done or suffered to be done at the request or direction of the committee. The committee may at any time appoint a successor to the depositaries, or either of them, or may appoint any additional depositary or depositaries. If the plan shall be declared operative, the committee shall and does hereby assume the payment and reimbursement of the compensation, expenses, disbursements and liabilities incurred and to be incurred by the three other committees hereinbefore named, including the charges of their respective counsel, subject to the approval of the committee as to the respective amounts of such charges, and the amounts so assumed shall be included among the expenses of the committee.

The compensation, expenses, disbursements and liabilities of the committee shall be paid as a part of the expenses of reorganization, and the compensation of such committee shall be conclusively deemed to be a part of the expenses of the reorganization for all the purposes of said plan and this agreement. The accounts of the committee shall be filed within six months after the reorganization shall be determined by the committee, to have been completed, with the board of directors of the new company, or the company which, in accordance with the provisions of said plan, shall issue the securities in said plan provided for, unless a longer time be granted by said board of directors. Such accounts, when approved by such board of directors, shall be final, binding and conclusive upon the depositors and upon all other parties having any interest therein, and upon such approval, whenever and however given, the committee shall be discharged, and all liability and accountability shall cease. The committee, or any subcommittee, may advise with counsel, and the opinion of counsel, acted upon in good faith, shall be full protection to the committee, or to such subcommittee, for anything done or suffered to be done in accordance with such opinion.

The acceptance of any securities by any depositor shall estop such acceptor from questioning the conformity of such securities in any particular to any provision of said plan, and

shall constitute full ratification by such acceptor of all acts and proceedings of the committee.

13. The enumeration of specific powers by this agreement conferred shall not be construed to limit or to restrict the general powers conferred by this agreement or intended so to be, and it is hereby declared that it is intended by this agreement to confer on the committee (and the depositors hereby confer upon the committee in respect to all deposited securities and in all other respects) any and all powers which the committee may deem necessary or expedient, in its uncontrolled discretion, in or toward carrying out or promoting the purposes of said plan and of this agreement, and as now existing or as the same may in any respect be modified or amended, even though any such power be apparently of a character not now contemplated; and the committee may exercise any and every such power as fully and effectively as if the same were herein distinctly specified and as often as for any cause or reason it may deem expedient. The method and means to be adopted for or toward carrying out said plan and this agreement shall be entirely discretionary with the committee.

14. All moneys paid under or in respect to said plan and this agreement shall be paid to the depositaries hereunder, or, if the committee shall so determine, the same may be paid to such subdepository or subdepositaries, agent or agents, as the committee shall designate. Said depositaries, and any such subdepository or agent, severally and respectively, shall hold all such moneys, subject to the check or order of the committee, and the committee is hereby expressly authorized to use the same or any part thereof, or to cause or permit the same or any part thereof to be used for any of the purposes of said plan or of this agreement, at such time as in its discretion may be most convenient and as from time to time may be determined by the committee, its determination as to the propriety and purpose of any such application to be final and binding upon all of the depositors; and nothing in said plan or in this agreement shall be understood as limiting or requiring the application of any specific moneys for any specific purpose.

15. All calls for the deposit of securities and payments to be made as provided by said plan or by this agreement, or for the presentation or surrender of certificates of deposit and all notices fixing or limiting any period for the deposit of securities or for such payments, or declaring said plan operative, and all other calls or notices hereunder, except when herein otherwise expressly provided, shall be published by the committee at least twice in each week for two successive weeks in one newspaper of general circulation published in the Borough of Manhattan, in the City of New York, and in one newspaper of general circulation published in the City of Chicago, Illinois. Any call or notice whatsoever, when so published by the committee, shall be taken and shall be considered as though personally served on all parties hereto and upon all parties to be bound thereby as of the date of the first insertion thereof, and such publication shall be the only notice required to be given under any provision of said plan or of this agreement and shall be sufficient for all purposes whether or not actually brought to the notice of the depositors.

16. Said plan and this agreement shall bind and benefit the several parties, including the depositors and their and each of their survivors, heirs, executors, administrators, successors and assigns. This agreement may be executed in several counterparts, all whereof shall constitute one original. An executed original counterpart hereof shall be lodged with each of the depositaries named herein. In the event of conflict between said plan and this agreement, the provisions of this agreement shall control. This agreement shall be construed in accordance with the laws of the State of New York.

In witness whereof, the committee has caused this agreement to be duly executed in its behalf by a majority of its members, and the depositors have become parties hereto in the manner hereinbefore provided, as of the day and year first above written.

Seward Prosser, Nathan L. Amster, Emile K. Boisot,  
Charles Hayden, James Speyer, S. Davies Warfield,  
Joint Reorganization Committee.

**Form No. 85****Reorganization of Railway—Plan of Agreement  
(Another Form)**

CINCINNATI, INDIANAPOLIS &amp; WESTERN RAILWAY COMPANY

New York, June, 4, 1915.

*To the Holders of Cincinnati, Indianapolis & Western Railway Company First and Refunding Mortgage (Four Per Cent. Fifty-year) Gold Bonds; Certificates of Deposit of the Equitable Trust Company of New York therefor, under the Bondholders' Agreement, dated July 9, 1914; the Indiana, Decatur & Western Railway Company First Mortgage Five Per Cent. (Forty-year) Gold Bonds, and Certificates of Deposit of the Equitable Trust Company of New York therefor, under the Bondholders' Agreement, dated July 9, 1914.*

The undersigned bondholders' committee, under the said bondholders' agreement, have approved, adopted and filed, as provided in said bondholders' agreement, the following plan and agreement for the reorganization of Cincinnati, Indianapolis & Western Railway Company:

**I—GENERAL STATEMENT**

1. Cincinnati, Indianapolis & Western Railway Company (herein called the "C. I. & W.") now forms part of the Cincinnati, Hamilton & Dayton Railway Company system (herein called the "C. H. & D."), and connects with the Cincinnati-Toledo main line at Hamilton, Ohio. From Hamilton, its eastern terminus, the C. I. & W. extends westwardly through Indianapolis, Indiana, to Springfield, Illinois, a distance of 295.82 miles. There is also a branch line, known as the Ohio River Division, extending southwardly from Sidell, Illinois, through Hume, where it crosses the main line of the C. I. & W., to Olney, Illinois, a distance of 85.35 miles. All of the above described line is owned by the C. I. & W., except trackage rights, at Indianapolis, Indiana, 1.28 miles; at Decatur, Illinois,

8.2 miles; at Springfield, Illinois, 2.48 miles; at Olney, Illinois, 8.36 miles—a total of 20.32 miles. The Indiana, Decatur & Western Railway Company first mortgage is a prior lien upon that portion of the C. I. & W. railway line between Indianapolis, Indiana, and Springfield, Illinois, and upon the Sidell & Olney Branch, covering a total mileage of approximately 262 miles (excluding trackage rights). The Cincinnati, Indianapolis & Western Railway Company first and refunding mortgage is a prior lien upon that portion of the line between Hamilton, Ohio, and Indianapolis, Indiana, covering a mileage of approximately 99 miles, and is a second lien upon the property covered by the Indiana, Decatur & Western Railway Company first mortgage above referred to.

Both of the above-mentioned mortgages are now under foreclosure.

No receiver has been appointed for the property of the C. I. & W., but it has been operated by the receivers of the C. H. & D. under an agreement, dated August 5, 1914, purporting to have been entered into between said receivers and the C. I. & W.

#### CONDITION OF THE PROPERTY

The bondholders' committee's engineers report that the C. I. & W. property between Hamilton and Springfield, is at present in good physical condition, except that expenditures may be required upon the bridge over the Wabash River at Montezuma and that the Sidell & Olney Branch is in fair condition.

#### EQUIPMENT

Certain equipment consisting of approximately 11 locomotives, 1,440 freight cars and 24 passenger cars, under the lien of the Indiana, Decatur & Western Railway Company first mortgage, has not been kept up by the C. H. & D. and its receivers, and it is claimed by the receivers that only a portion of this equipment is fit for service.

The bondholders' committee's expert reports that 50 new locomotives, 800 new freight cars and 29 new passenger, baggage



and mail cars should be purchased (if substantially all of the property is acquired), which, together with the present equipment, should be sufficient for the present volume of business.

#### INDIANAPOLIS TRACK ELEVATION

The City of Indianapolis, Indiana, has adopted a track elevation ordinance, and it is estimated that an expenditure of approximately \$500,000 must be made to elevate the tracks of the C. I. & W. there, and to provide an adequate freight terminal. There is a possibility, however, that this expenditure may be materially reduced by an exchange of property with adjoining roads.

#### ADDITIONAL TRAFFIC

In order to provide additional traffic, it may eventually be found necessary to extend the road to connect with other roads at various points, or to acquire additional property and to make other improvements, and an adequate amount of new securities has been authorized for that purpose.

#### SIDELL & OLNEY BRANCH

It is not proposed to place under the lien of the new mortgage the Sidell & Olney Branch, but to leave that branch in a position where it can be leased, sold or operated as a separate property.

#### EARNING POWER OF THE COMPANY

The C. H. & D. and its receivers claim that during the last few years heavy deficits have been incurred in operating the C. I. & W. property. The experts employed by the bondholders' committee, however, are of the opinion that the property can be operated at a profit under proper management. It appears to the committee that the alleged operating deficits have been created because (a) the property has been operated as a division of the C. H. & D.; (b) a disproportionate amount of the overhead expenses of the system has been charged against this property; (c) it has not been accorded a fair

division of the joint revenue; (d) it has been charged with an undue proportion of the hire of equipment, repair of equipment, and the use of joint facilities; (e) fuel charges have been excessive, and because of other items. The committee is advised and believes that by reason of the fact that the Baltimore & Ohio Railroad Company has for a number of years been in control of the C. H. & D., a large amount of traffic has been diverted from the C. I. & W. to the Baltimore & Ohio Southwestern, a parallel line. The committee is of the opinion that, under normal conditions, and independent management, the property should earn, within a short time, not only its new fixed charges but also a return upon the new stock.

THE GUARANTY OF C. I. & W. AND I. D. & W. BONDS BY THE  
C. H. & D.

All of the first and refunding mortgage fifty-year gold bonds of the C. I. & W. are guaranteed principal and interest by the C. H. & D. Prior to November, 1903, the constitution of the State of Ohio imposed a double liability upon stockholders of Ohio corporations. The bondholders' committee is advised by counsel that in their opinion, as to such of these bonds as were issued prior to the taking effect of a constitutional amendment adopted in the fall of 1903, abolishing the stockholders' double liability, the stockholders of the C. H. & D. are liable to the extent of the stock owned by them, for any deficiency upon the foreclosure sale. The C. H. & D. receivers, however, contend that a large portion of these bonds were not issued until after the constitutional amendment took effect.

As to the I. D. & W. bonds represented by the bondholders' committee, it appears that \$933,000 face amount were specifically guaranteed by the C. H. & D., and the committee contends that the C. H. & D. stockholders may be liable upon the remaining bonds.

Unless some adjustment is made with the stockholders of the C. H. & D., litigation must be prosecuted after the plan of reorganization has been consummated, to recover on the stockholders' liability, and for that purpose a committee may

be formed to represent such bondholders as desire to continue that litigation or such other action may be taken as the reorganization committee in its discretion may determine.

#### BOTH CLASSES OF BONDS RECEIVE SIMILAR TREATMENT

The I. D. & W. mortgage is a first lien on that part of the line between Indianapolis, Indiana, and Springfield, Illinois, a distance of approximately 176.5 miles owned (exclusive of the Sidell & Olney Branch) while the C. I. & W. mortgage is a first lien upon that part of the line between Hamilton, Ohio, and Indianapolis, Indiana, a distance of approximately 99 miles. In the opinion of the bondholders' committee, the greater traffic density, greater earning power and higher value per mile of that part of the line between Hamilton and Indianapolis, and the benefits derived from joint operation, offset the fact that the I. D. & W. mortgage secures a less number of bonds, is a prior lien upon a larger mileage, and is a lien on certain equipment, and therefore both classes of bonds have been treated alike by the committee.

#### PRESENT SECURITIES

The capitalization of the C. I. & W. is as follows:

The Indiana, Decatur & Western Railway Company	
first mortgage five per cent. (forty-year) gold bonds .....	\$3,162,000
Interest from January 1, 1914, to July 1, 1915, at 5%.	237,150
Cincinnati, Indianapolis & Western Railway Company first and refunding mortgage (four per cent. fifty-year) gold bonds.....	4,722,000
Interest from January 1, 1914, to July 1, 1915, at 4%.	283,320
Cincinnati, Indianapolis & Western Railway Company stock about .....	7,115,800
	<hr/>
	\$15,520,270

The C. H. & D. claims to own substantially all of the stock of Cincinnati, Indianapolis & Western Railway Company.

## OPERATION BY THE C. H. &amp; D. RECEIVERS

The receivers of the C. H. & D. claim that since their appointment on July 2, 1914, to January 1, 1915, a deficit was incurred in the operation of the C. H. & D. of upwards of \$197,000 and that in addition they have made various expenditures in connection with a subway at Jasper Street, Decatur, Illinois, and in repairing a bridge at Montezuma over the Wabash River.

The receivers contend that any advances made in operating the property and in repairing the Montezuma bridge, etc., should be given a lien prior to the liens of the two mortgages above referred to, represented by the bondholders' committee. The bondholders' committee has contested the amount alleged to have been so advanced and the amount alleged to have been lost in operation and has opposed the allowance of any amount alleged to have been heretofore advanced, as a lien prior to the lien of these mortgages.

## II—CASH REQUIREMENTS OF THE PLAN

It is estimated that \$4,053,200 will be required for the following purposes in case all or substantially all of the property is acquired:

1. Foreclosure costs and allowances, compensation of committees, counsel and experts, expenses of re-organization; incorporation of new company, etc .....	\$ 250,000
2. Cash working capital.....	250,000
3. New equipment .....	2,250,000
4. Indianapolis track elevation and new terminals there .....	500,000
5. To be reserved for possible prior liens, payment of interest on new obligations until the road is self-sustaining, improvements and betterments, bankers' and syndicate compensation, etc....	803,200
Total .....	<hr/> \$4,053,200

Of the item (No. 3) of \$2,250,000 set aside for new equipment in the above schedule, it is proposed to provide to the extent of approximately seventy-five per cent. or \$1,688,000 by the sale of equipment obligations, thus reducing to \$2,365,200 the new money to be raised by new bonds and new stock.

Any amounts not used in connection with the above items will be paid over to the new company.

It is contemplated that the above-mentioned sum of \$2,365,200 will be raised by offering on the terms hereinafter provided to the holders of the Indiana, Decatur & Western Railway Company first mortgage five per cent. gold bonds, and to the holders of Cincinnati, Indianapolis & Western Railway Company first and refunding mortgage four per cent. fifty-year gold bonds, the following amounts of securities of the new company contemplated by the reorganization plan, namely:

1. First mortgage five per cent. fifty-year gold bonds (of a total authorized issue limited to \$12,000,000 face value)..... \$2,365,200
2. Preferred stock (of a total authorized issue of \$7,500,000 par value)..... 4,730,400
3. Common stock (of a total authorized issue of \$7,500,000 par value)..... 4,730,400

The above sum of \$2,365,200 is equal to thirty per cent. of the outstanding \$7,884,000 face amount of C. I. & W. and I. D. & W. bonds, and the items of \$4,730,400 are each equal to sixty per cent. of the outstanding bonds.

In case the reorganization committee does not acquire the property covered by the first lien of the C. I. & W. mortgage, the holders of certificates of deposit of bonds secured by that mortgage will receive their distributive share of the net proceeds, upon the foreclosure sale, of the property covered by that mortgage, less the expenses and compensation of the com-

mittees; the holders of certificates of deposit of such bonds will take no further part in the reorganization, and the reorganization committee is authorized to proceed with the reorganization of the balance of the property on behalf of the holders of certificates of deposit of the I. D. & W. bonds alone. The reorganization committee is authorized, in that event without notice to the holders of certificates of deposit of I. D. & W. bonds, to reduce the amount of cash to be raised and the amount of new first mortgage bonds and preferred and common stock to be issued, in the same proportion which the amount of I. D. & W. bonds outstanding bears to the total amount of I. D. & W. and C. I. & W. bonds outstanding, and the reorganization committee is further authorized, without notice to the holders of certificates of deposit of I. D. & W. bonds, to make such changes in the plan of reorganization as the committee in its absolute discretion may deem necessary to meet the situation so created, and the holders of certificates of deposit of I. D. & W. bonds specifically assent to the plan as so modified.

In case the reorganization committee does not acquire the property covered by the I. D. & W. mortgage, the holders of certificates of deposit of bonds secured by that mortgage will receive their distributive share of the net proceeds, upon the foreclosure sale, of the property covered by that mortgage, less the expenses and compensation of the committees; the holders of certificates of deposit of such bonds will take no further part in the reorganization and the reorganization committee is authorized to proceed with the reorganization of the balance of the property on behalf of the holders of certificates of deposit of C. I. & W. bonds alone. The reorganization committee is authorized, in that event, without notice to the holders of certificates of deposit of C. I. & W. bonds, to reduce the amount of cash to be raised and the amount of new first mortgage bonds and preferred and common stock to be issued, in the same proportion which the amount of C. I. & W. bonds

outstanding bears to the total amount of C. I. & W. and I. D. & W. bonds outstanding. The reorganization committee is further authorized, without notice to the holders of certificates of deposit of C. I. & W. bonds, to make such changes in the plan of reorganization as the committee in its absolute discretion may deem necessary to meet the situation so created, and the holders of certificates of deposit of C. I. & W. bonds specifically assent to the plan as so modified.

### III—NEW COMPANY

A new company or companies will be formed under the laws of such state or states as the reorganization committee may deem desirable, or an existing charter or company may be used for the purposes of reorganization. The term "new company" as herein used is intended to mean whatever company or companies may finally be utilized to issue the new securities, provided for in the plan. If and when the plan shall be declared operative by the reorganization committee, it is intended to acquire so much of the property covered by the C. I. & W. and I. D. & W. mortgages, as the reorganization committee may deem expedient. The new company shall have such powers as the reorganization committee shall determine, in its discretion.

### IV—VOTING TRUST

Upon the organization of the new company and before the distribution of securities and cash under this plan, all stock, other than shares reserved to qualify directors, may be vested for a time not longer than five years in not more than five voting trustees appointed by the reorganization committee, and voting trust certificates in such form as may be determined by the committee may be distributed in lieu of certificates of stock.

The voting trust agreement may provide for the method of filling vacancies and for the termination of the agreement and

shall confer such rights and powers on the voting trustees as the reorganization committee in its discretion may deem expedient.

All reference in this plan, and in the agreement of reorganization hereto attached, to the delivery of stock of the new company to depositors or otherwise, shall be understood to mean voting trust certificates in respect of such stock, in case the reorganization committee determines to create such voting trust.

#### V—PROPOSED NEW CAPITALIZATION

It is proposed that the new company shall authorize the following classes of securities: 1. *\$12,000,000 authorized First Mortgage Five Per Cent. Fifty-year Gold Bonds.* The first mortgage bonds are to be of the denomination of \$1,000; are to bear interest at the rate of five per cent. per annum, payable semiannually; are to mature in fifty years from their date; are to be redeemable at the option of the new company on any interest payment date upon thirty days' published notice, at 105 per cent. of their face value and accrued interest; and are to be secured by the new company's first mortgage to such trustee or trustees, as the reorganization committee may designate, covering all or substantially all the properties, rights and privileges that shall be vested in the new company (except the Sidell & Olney Branch) and also all property which shall thereafter be acquired by the new company through the use of the said bonds or their proceeds. The form and terms of the first mortgage, in respects not expressly covered by the plan, shall be such as shall be approved by the reorganization committee. The amount of bonds to be issued under the first mortgage is to be limited to \$12,000,000 face value. Provision will be made in the first mortgage that further bonds may be issued, after the reorganization plan has been carried out, under such carefully guarded restrictions as the reorganization committee may determine.



2. *\$7,500,000 par value of Preferred Stock.* Each share of preferred stock (\$100 par value) shall be entitled to receive or to have set apart for it a noncumulative dividend at the rate of five per cent. per annum and no more, in each fiscal year that the new company shall, in the opinion of its board of directors, have any surplus or any net income applicable to the payment of dividends, before any dividends for such year shall be paid on the common stock. In case of the dissolution or liquidation of the new company, the holders of the preferred stock shall be entitled to receive out of the assets of the new company the par value of their stock, and any dividends declared and unpaid thereon or set apart therefor before any payment shall be made upon the common stock of the new company, and thereafter the common stock shall be entitled to all the assets remaining.

3. *\$7,500,000 par value of Common Stock.* The common stock (\$100 par value) shall be subject to the rights and privileges of the holders of the preferred stock.

#### VI—DISTRIBUTION OF SECURITIES

1. To the holders of first mortgage five per cent. gold bonds of the Indiana, Decatur & Western Railway Company (\$3,162,000 face amount outstanding) paying \$300 for each \$1,000 bond deposited under the plan

In new First Mortgage Bonds.....\$300 face amount,  
In new Preferred Stock ..... 600 par value,  
In new Common Stock ..... 600 par value.

2. To the holders of first and refunding mortgage four per cent. fifty-year gold bonds of Cincinnati, Indianapolis & Western Railway Company (\$4,722,000 face amount outstanding) paying \$300 for each \$1,000 bond deposited under the plan:  
In new First Mortgage Bonds.....\$300 face amount,  
In new Preferred Stock ..... 600 par value,  
In new Common Stock ..... 600 par value.

In case all of the holders of both of the above-mentioned classes of bonds deposit their bonds and pay \$300 upon each of their bonds, there will then be issued:

In new First Mortgage Bonds.....	\$2,365,200 face amount,
In new Preferred Stock .....	4,730,400 par value,
In new Common Stock .....	4,730,400 par value,

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Total capitalization of new company,  
in case all bondholders assent to  
plan and pay the assessment....\$11,826,000

In case the committee does not acquire the property covered by the I. D. & W. mortgage and in case all of the holders of C. I. & W. bonds deposit their bonds and pay \$300 upon each of their bonds, the cash payment will amount to \$1,416,600, and there will then be issued:

In new First Mortgage Bonds.....	\$1,416,600 face amount,
In new Preferred Stock .....	2,833,200 par value,
In new Common Stock .....	2,833,200 par value.

In case the committee does not acquire the property covered by the first lien of the C. I. & W. mortgage and in case all of the holders of I. D. & W. bonds deposit their bonds and pay \$300 upon each of their bonds, the cash payment will amount to \$948,600, and there will then be issued:

In new First Mortgage Bonds.....	\$ 948,600 face amount,
In new Preferred Stock .....	1,897,200 par value,
In new Common Stock .....	1,897,200 par value.

## VII—SCHEDULE OF DISTRIBUTION

Existing Securities	Cash Payment		New Securities					
			First Mortgage Bonds		Preferred Stock		Common Stock	
	%	Amount	%	Face Value	%	Par Value	%	Par Value
\$4,722,000 face value of C. I. & W. First and Refunding Mortgage 4% Gold Bonds.	30	\$1,416,600	30	\$1,416,600	60	\$2,833,200	60	\$2,833,200
\$3,162,000 face value of I. D. & W. First Mortgage 5% Gold Bonds.....	30	948,600	30	948,600	60	1,897,200	60	1,897,200
Total outstanding bonds \$7,884,000 .....	30	\$2,365,200	30	\$2,365,200	60	\$4,730,400	60	\$4,730,400

## VIII—AMOUNTS PAYABLE BY PARTICIPANTS IN PLAN

In order to provide the sum of \$2,365,200 referred to above, holders of the Indiana, Decatur & Western Railway Company first mortgage five per cent. forty-year gold bonds and the holders of Cincinnati, Indianapolis & Western Railway Company first and refunding mortgage four per cent. fifty-year gold bonds are required to pay \$300 for each \$1,000 bond deposited by them respectively under the plan, and upon the surrender of their respective bonds they are respectively entitled to receive therefor

\$300 par value in New First Mortgage Bonds,  
600 par value in the Preferred Stock, and  
600 in the Common Stock of the New Company.

Assenting bondholders assign to the reorganization committee all right, title and interest in and to their bonds.

## IX—UNDERWRITING

The reorganization committee is authorized to have the plan underwritten by a syndicate. The committee will endeavor to secure the formation of such a syndicate to underwrite the cash requirements of the plan and to make provision for the payment to nonassenting bondholders of their distributive share of the proceeds of the foreclosure sale of the property, for a cash commission of one per cent. to the syndicate managers and of three per cent. to the members of the syndicate based upon the maximum liability of the underwriters. To the extent of the nonparticipation in the plan on the part of bondholders, the securities of the new company and the other benefits which would have been distributed to them on their participation in the plan will go to the syndicate. The reorganization committee has the right to cause to be issued and to sell to or through the underwriting syndicate for such price as it may determine as many of the first mortgage bonds and as much of the preferred and common stock of the new company as it shall find necessary in order to provide for the payment of the amounts due to nonassenting bondholders upon the foreclosure proceedings.

The reorganization committee also has the right to cause to be issued and to sell equipment obligations on such terms and conditions as it may in its discretion determine.

X—TERMS AND CONDITIONS OF PAYMENT BY ASSENTING  
BONDHOLDERS

Upon the plan being declared operative, fourteen days' notice will be given to assenting bondholders of the date by which the payments required of them under the plan shall be made. Bondholders may either make such payments in full or, at their option, pay fifty per cent. thereof by the date specified in said notice and the remaining fifty per cent. thereof one month thereafter, such deferred payments to carry interest at the rate of five per cent. per annum. Any assenting bondholder defaulting in any payment required by the plan will, unless the reorganization committee shall otherwise determine in any particular instance or instances, forfeit the securities of the new company to which he is otherwise entitled and any payments which he may have already made. The reorganization committee, in its discretion, may in general or particular instances enlarge or extend the time for making any deposit or payment required by the plan and impose conditions in respect of any such deposit or payment.

XI—STATEMENTS CONTAINED IN THE PLAN

The statements contained in the plan have been compiled from sources believed to be reliable and accurate, but certain of them are necessarily approximate and none of them are to be construed as representations.

XII—METHODS AND TERMS OF PARTICIPATION

*Certificates of Deposit of the Equitable Trust Company of New York for Cincinnati, Indianapolis & Western Railway Company First and Refunding Mortgage Four Per Cent. Fifty-year Gold Bonds, and*

*Certificates of Deposit of the Equitable Trust Company of New York for the Indiana, Decatur & Western Railway Company First Mortgage Five Per Cent. Forty-year Gold Bonds:*

The plan having been prepared and adopted by the bondholders' committee, of which Mr. William A. Read is chairman, under the bondholders' agreement, dated July 9, 1914, that committee will publish notice of such preparation and adoption, and that the plan will be binding and effective upon the holders of its certificates of deposit who do not surrender their certificates and withdraw the bonds represented thereby upon the terms and in accordance with the provisions of the bondholders' agreement under which such certificates were issued. All holders of certificates of deposit issued by said committee who shall fail to withdraw their bonds as provided by the terms of said bondholders' agreement and in accordance with the terms of the published notice of said committee shall be conclusively and finally deemed for all purposes to have assented to the plan and agreement of reorganization and to the terms thereof, and immediately upon the plan and agreement being declared operative and effective, all such holders of certificates of deposit shall be irrevocably bound and concluded thereby. The reorganization committee, if it deems it desirable or convenient so to do, may require holders of said certificates of deposit to present the same to the depository of the reorganization committee in order that there may be noted thereon the assent of the holders thereof to the plan and agreement of reorganization, and any holder of any such certificate of deposit may present the same to the depository of the reorganization committee for the purpose of having such notation made upon his certificate of deposit.

*Holders of Cincinnati, Indianapolis & Western Railway Company First and Refunding Mortgage Four Per Cent. Fifty-year Gold Bonds, and*

*Holders of the Indiana, Decatur & Western Railway Company First Mortgage Five Per Cent. Forty-year Gold Bonds:*

Holders of either of said classes of bonds who have not already deposited their bonds with the above-mentioned bondholders' committee and who desire to participate in the plan and agreement of reorganization must deposit their bonds bearing all coupons maturing on and after July 1, 1914, with

the Equitable Trust Company of New York, as depository for the reorganization committee on or before June 30, 1915, receiving therefor certificates of deposit in form approved by the reorganization committee, and the holders of such certificates of deposit shall be conclusively deemed to be subject to and irrevocably bound by the plan and agreement of reorganization. Holders of said bonds not depositing the same shall have no right to participate under the plan in any capacity in respect of said bonds or otherwise.

### XIII—AGREEMENT OF REORGANIZATION

In order to enable the plan to be carried out and to give effect to the same, the annexed agreement of reorganization has been prepared. Whenever the word "plan" is used herein, it shall be deemed to include said agreement and the provisions thereof, and every depositor assenting to the plan thereby becomes a party to said agreement, the provisions of which shall govern in case of conflict between the plan and the agreement.

William A. Read, Chairman.

J. Augustus Barnard, Henry E. Cooper, Frederick H. Ecker, George K. Johnson, H. F. Whitcomb, Albert H. Wiggin, L. Edmund Zacher, Bondholders' Agreement, dated July 9, 1914.

Dated New York, June 4, 1915.

#### *Reorganization Agreement*

Agreement, entered into June 4, 1915, by and between Frederick H. Ecker, J. Augustus Barnard, Henry E. Cooper, George K. Johnson, H. F. Whitcomb, Albert H. Wiggin and L. Edmund Zacher (herein termed the "reorganization committee"), parties of the first part, holders of certificates of deposit of the Equitable Trust Company of New York, for Cincinnati, Indianapolis & Western Railway Company first and refunding mortgage (four per cent. fifty-year) gold bonds and holders of certificates of deposit of the Equitable Trust Company of New York, for the Indiana, Decatur & Western

Railway Company first mortgage five per cent. (forty-year) gold bonds deposited under the bondholders' agreement, dated July 9, 1914, and holders of said bonds who shall become parties hereto in the manner herein provided, together with their assignees, transferees and successors in interest, and the holders from time to time of the certificates of deposit issued hereunder or otherwise subject hereto (all of whom are herein collectively termed the "depositors"), parties of the second part, and the Equitable Trust Company of New York, as depositary hereunder (herein termed the "depositary"), party of the third part.

Whereas, it is the desire of the depositor that the foregoing plan of reorganization (herein termed the "plan") be carried into effect by the reorganization committee, in its discretion:

Now, therefore, for the purpose of carrying out the plan in whole or in part and whether modified or amended, and in consideration of the premises and of the conditions and terms hereinafter contained and of the advantages expected to result therefrom to the respective depositors and for other good and valuable considerations, the parties hereto have respectively agreed and do hereby severally agree and each depositor has agreed and hereby does agree with each of the other depositors and with the reorganization committee as follows:

1. An original of the plan and of this agreement, signed by at least a majority of the reorganization committee and by the depositary, shall be lodged with the Equitable Trust Company of New York at its principal office in the City of New York. The plan and this agreement may be executed in as many counterparts as desired, each of which counterparts shall be deemed to be an original and all of which together shall constitute one and the same instrument.

The depositors jointly and severally hereby assent to and accept all of the provisions of the plan, and the same is hereby approved and adopted and shall be deemed to be a part of this agreement with the same force and effect as if each and every



provision thereof had been embodied herein and the plan and this agreement shall be read as one and a part of the same instrument; and every depositor assenting to either shall be bound by both. No estimate, statement, explanation or suggestion, nor anything contained in the plan or in this agreement or in any statement, circular or advertisement issued or which may hereafter be issued by the reorganization committee or by anyone else, is intended or shall be taken or accepted or construed as a representation or warranty or as a condition of or inducement for any deposit, subscription, assent or payment under the plan or of this agreement, or any modification thereof or any amendment thereof; and no defect or error in the plan or in this agreement or in any such statement, circular or advertisement shall release any depositor under the plan or under this agreement or affect or release any assent thereto or the deposit of securities hereunder or any subscription or payment made pursuant to the plan or this agreement or anything contained herein or in connection therewith, except by written consent of the reorganization committee.

2. Participation in the plan or in this agreement in any respect whatsoever is conditioned upon the holders of the securities (including in said term whenever used in the plan or in this agreement certificates of deposit as well as the bonds hereinbefore mentioned) becoming parties to the plan and this agreement in the manner following:

Holders of certificates of deposit issued by the Equitable Trust Company of New York, representing Cincinnati, Indianapolis & Western Railway Company first and refunding mortgage four per cent. fifty-year gold bonds and holders of certificates of deposit, representing the Indiana, Decatur & Western Railway Company first mortgage five per cent. forty-year gold bonds deposited under the bondholders' agreement dated July 9, 1914, who do not surrender their certificates of deposit and withdraw the bonds represented thereby in accordance with the provisions of said bondholders' agreement shall conclusively and finally be deemed for all purposes to have

assented to the plan and this agreement and to the terms thereof, and when the plan and this agreement are declared operative and effective, all such holders of certificates of deposit shall be irrevocably bound and concluded by all the provisions of the plan and of this agreement, with the same force and effect as if they had severally, for a valuable consideration, executed the same; and all holders of such certificates of deposit not so surrendered shall conclusively and finally be deemed for all purposes to have assented to the plan and to this agreement, and the holders from time to time of such certificates of deposit shall conclusively be deemed depositors hereunder.

Holders of Cincinnati, Indianapolis & Western Railway Company first and refunding mortgage four per cent. fifty-year gold bonds and holders of the Indiana, Decatur & Western Railway Company first mortgage five per cent. forty-year gold bonds who have not already deposited their bonds under said bondholders' agreement, dated July 9, 1914, desiring to participate in the plan and this agreement, must deposit their bonds bearing all coupons maturing on and after July 1, 1914, with said depository under this agreement within the period limited in and by the plan or within any additional period fixed by the reorganization committee in its absolute discretion, receiving therefor certificates of deposit in form approved by the reorganization committee; and the holders of such certificates of deposit shall be conclusively deemed to be subject to and irrevocably bound by the plan and this agreement and to be depositors hereunder. All holders so depositing their bonds shall be deemed to have assented to the plan and to this agreement and will be irrevocably bound by all the provisions thereof with the same force and effect as if they had severally, for a valuable consideration, executed the same.

The holders of all certificates of deposit issued under or subject to the plan and this agreement shall be entitled to and only to the rights and benefits specified in the plan and in this agreement as accruing to the holders of the particular class of securities represented by such certificates of deposit

respectively, or to the rights and benefits granted by the reorganization committee pursuant to the powers conferred upon it; and the holder of any such certificate of deposit, or of any certificate or certificates of deposit issued in lieu thereof, shall be subject to the plan and to this agreement, and shall be entitled to have and exercise in respect of the securities named in such certificate or otherwise only the rights of the original depositor hereunder.

The reorganization committee may, at its option, and by notice given either by mail or in the manner provided in Article Eleventh of this agreement, require all certificates of deposit at any time issued under the aforesaid bondholders' agreement dated July 9, 1914, within a period of not less than fourteen days from the first publication of such notice, either (1) to be presented to the depositary under the plan for appropriate notation thereon that such certificate of deposit is held subject to the plan and to this agreement and that the holder thereof has assented to all the terms and provisions thereof; or (2) to be surrendered to said depositary accompanied by properly executed transfers thereof in exchange for certificates of deposit to be issued under the plan and this agreement in form approved by the reorganization committee, representing a like amount of securities to those represented by the certificate of deposit so surrendered. Any holder of any certificate of deposit issued under the said bondholders' agreement, dated July 9, 1914, may present the same to the depositary under the plan and this agreement for the purpose of having the aforesaid notation made upon his certificate of deposit and thereupon such notation shall be made by the depositary.

The reorganization committee may cause to be listed on the New York Stock Exchange or elsewhere any or all of the certificates of deposit issued under or subject to the plan and this agreement and any or all of the new securities contemplated by the plan to be created or issued; and as part of the cost of the reorganization may pay or cause the new company

referred to in the plan to pay the expenses of any such listing and any taxes in connection therewith, or any taxes or charges imposed by any public authority wherever situated in respect to the creation, issue or distribution of all or any of the new securities or otherwise.

All securities must be deposited with all transfers, assignments and powers of attorney necessary in order to vest in the committee acting under the bondholders' agreement under which the same are deposited or the reorganization committee, as the case may be, a complete and absolute title thereto, and the depositors respectively agree at any time, on demand of such committee or the reorganization committee, as the case may be, to execute any and all other transfers, assignments, authorizations, powers or writings required for vesting the ownership of the securities deposited hereunder or otherwise subject hereto in such committee, or in the reorganization committee, or their or its nominees.

The certificates of deposit issued hereunder or otherwise subject hereto, and the interest represented thereby and all rights by virtue thereof, shall be transferable, but only subject to the terms and conditions of the plan and this agreement in such manner as the reorganization committee or the depository issuing the same shall approve; and upon any such transfer all rights of the transferor of any such certificate of deposit under the plan and this agreement and in respect of the deposited securities represented thereby, and all installments of money paid in respect thereof shall be and become vested in and shall pass to the transferee, and all rights of the transferor under such certificate of deposit or otherwise shall forthwith cease and determine.

The certificates of deposit and any temporary or other certificates or receipts issued by any depository may be treated by the reorganization committee and by the depository issuing the same as negotiable instruments, and the holders for the time being, or if registered, the registered holders for the time being may be deemed to be the absolute owners thereof, and

of all rights of the original holders of said certificates of deposit, and neither the reorganization committee nor any depositary shall be affected by any notice to the contrary.

By accepting or holding any certificate of deposit issued by any depositary every recipient or holder thereof shall become thereby a party to the plan and to this agreement, with the same force and effect as if he had actually executed the same, and each such recipient and holder does hereby authorize the reorganization committee to affix his signature to the plan and to this agreement, and to any other paper in connection with the reorganization to which it may deem it advisable so to do.

The term "depositor," whenever used, is intended and shall be construed to include not only persons acting in their own right, but also trustees, guardians, committees, agents and all persons acting in a representative or fiduciary character and those represented by or claiming under them, and partnerships, associations, joint stock companies and corporations.

Except as in writing expressly otherwise provided by the reorganization committee no rights hereunder shall accrue in respect of any securities unless and until the same shall have been subjected to the operation of the plan and of this agreement as herein provided.

Holders of certificates of deposit issued by the depositary or by the depositary under the bondholders' agreement aforesaid, upon compliance with all the terms and conditions of the plan and of this agreement, shall be entitled to receive upon the consummation of the plan and surrender of such certificates of deposit in negotiable form, the new securities (but only as and when issued and ready for delivery) to which they shall be respectively entitled pursuant to the terms and provisions of the plan and of this agreement. In its discretion the reorganization committee may fix or may limit any period or periods within which holders of securities of any class or classes may in general or particular instances deposit the same as herein and in the plan provided, and within which they may become parties to this agreement and to the plan, and, subject

to the provisions in that behalf stated in the plan, the time within which must be paid the cash payable by holders of certificates of deposit, and on such terms as it may see fit it may extend or renew or vary in general or particular instances, any period or periods so fixed or limited.

Holders of securities who do not deposit the same in the manner herein provided, and within the periods limited or fixed therefor, and the holders of certificates of deposit issued under the bondholders' agreement above mentioned who shall exercise the right of withdrawal within the time, upon the terms, in the manner and otherwise as provided in the said bondholders' agreement under which their certificates of deposit were issued, will not be entitled to deposit their securities or become parties to this agreement nor to share in the benefits of the plan or of this agreement, and shall acquire no rights hereunder, except upon obtaining an express written consent of the reorganization committee. And the reorganization committee is hereby authorized and empowered in its absolute discretion and in general or particular instances, and upon such terms and conditions as it may see fit, to withhold or give such consent, and it shall have power in its discretion at any time to admit as parties and to participation in the plan and in this agreement, as depositors hereunder, the holders of any of the securities mentioned in the plan, in such manner and upon such terms and conditions as it shall fix and determine.

The bondholders' committee, consisting of William A. Read and others, constituted by and acting under the said bondholders' agreement dated July 9, 1914, have adopted and filed the plan and this agreement in accordance with the provisions of said bondholders' agreement and have given notice of such adoption and filing in accordance with the terms of said bondholders' agreement. Notwithstanding the powers hereby conferred upon the reorganization committee, the bondholders' committee shall continue in existence with all the powers conferred upon it by said bondholders' agreement and shall from time to time take such action under said bondholders' agree-

ment as shall be necessary and proper for the purpose of carrying this plan and this agreement into effect as to the securities deposited with the depositary of the bondholders' committee, and by the adoption of the plan and this agreement, the bondholders' committee agrees that so long as the plan in its present form or in any modified form adopted by the reorganization committee in accordance with the provisions hereof, remains unabandoned, the bondholders' committee will take such action accordingly. All indebtedness, expenses and obligations heretofore incurred by the bondholders' committee and all which may be hereafter incurred by it with the approval of the reorganization committee, and the compensation of the bondholders' committee shall be and continue to be a charge against and a lien upon the securities on deposit with the depositary of the bondholders' committee.

At any time or times, either before or after the plan and this agreement shall have been declared operative and effective, the reorganization committee may arrange with the said bondholders' committee for the transfer to and deposit with the depositary under this agreement of the bonds and coupons then held by the depositary of said bondholders' committee and said bondholders' committee is hereby authorized and empowered to enter into such arrangements and to make such transfers and deposits. The reorganization committee may require the holders of certificates of deposit issued by the depositary of such bondholders' committee to surrender their certificates of deposit to the depositary under this agreement and to receive in exchange therefor certificates of deposit issued by such depositary. In the event that said bonds and coupons held by the depositary under said bondholders' agreement are transferred to and deposited with the depositary under this agreement, the reorganization committee shall forthwith be vested with all the rights and powers of full and complete ownership of said bonds and coupons and the same shall be considered as a part of the deposited securities as such term is used in

this agreement and be subject to all the terms and conditions of this agreement relating to deposited securities.

The reorganization committee in such manner and at such time as counsel for the reorganization committee shall advise, may transfer and assign to the respective depositors or their nominees, or to another committee all rights against the Cincinnati, Hamilton & Dayton Railway Company and its stockholders, of recovery upon the guaranty of the Cincinnati, Hamilton & Dayton Railway Company of the payment of the principal and interest of the deposited bonds so guaranteed; or in its discretion the reorganization committee may collect, adjust, compromise or settle with the Cincinnati, Hamilton & Dayton Railway Company and its stockholders upon said guaranties, or may bring or intervene in suits, actions or legal proceedings upon the same and may compromise, adjust, settle or discontinue the same, on behalf and for the benefit of the respective depositors.

The cash payable as provided in the plan by the holders of certificates of deposit issued hereunder or otherwise subject hereto must be paid to the reorganization committee at the principal office of the depository in New York funds, or, to the extent that the reorganization committee may permit, such payments or any of them may be made to such other agents and at such other places as the reorganization committee shall designate for such purpose. Each payment must be receipted for by the depository hereunder or by some one of such other agents as the reorganization committee may designate, on the certificate of deposit in respect of which such payment is made, upon presentation to said depository, or to such agent for that purpose designated, of the said certificate of deposit at the time of making such payment. Any or all of the moneys paid under the plan may be used at any time by the reorganization committee, or with its approval, for the payment, compromise or acquisition of obligations or claims which, under the plan or under this agreement, may be paid, compromised or



acquired, and for the acquisition of property or for any of the purposes of the plan or of this agreement.

All holders of certificates of deposit issued under or subject to the plan and this agreement hereby severally and respectively agree on behalf of themselves and on behalf of their respective transferees and assignees that the prompt payment of the cash or any installment thereof, which under the terms of the plan and of this agreement, they are required to pay in order to entitle them to the new securities, is an essential condition to the acquisition by them respectively of such new securities. All holders of such certificates of deposit who fail to make payment of any cash or any installment thereof payable as provided in the plan or in this agreement, within the period fixed or limited for such payment in the plan or this agreement or by the reorganization committee, forthwith, without further order, notice or action, shall in the discretion of the committee cease to be entitled to any rights or benefits hereunder, and no such holders of certificates of deposit or their successors in interest shall be entitled to the return of the deposited securities represented by their certificates of deposit, or to the repayment of any cash theretofore paid by them or their predecessor or predecessors in interest, or to have any further interest or right under or in respect of the same or under this agreement; and such securities shall vest in the reorganization committee or in any such person, firm, corporation or syndicate, as the reorganization committee in its discretion shall determine; and the said securities may be used for any purpose deemed by the reorganization committee useful in carrying out the plan or this agreement, and any cash paid as above provided, prior to the date of any such default, shall belong to or be held and applied for account of the reorganization committee. The reorganization committee, however, in its discretion may waive any such default and may accept payment of overdue installments from any depositor at any time, and with or without the imposition of such terms and conditions as it may prescribe. It may also waive

and remit any penalty prescribed either in the plan or in this agreement, or in pursuance thereof. It may also, in its discretion and upon such terms and conditions as it shall prescribe, and either in general or particular instances, permit holders of securities to become parties to the plan and to this agreement without the actual deposit of such securities, and all security holders so becoming parties are intended to be embraced within the term "depositor" whenever used in this agreement. The reorganization committee is authorized to make such arrangements with bondholders who have deposited their bonds under the bondholders' agreement, dated July 9, 1914, and who, in the opinion of the reorganization committee (which opinion shall be final) are unable to participate in the reorganization, as the committee in its absolute discretion may determine. The reorganization committee is specifically authorized to treat such bondholders in the same manner or differently, as the committee in its absolute discretion may determine.

This agreement shall not, nor shall the plan be construed to create any trust or obligation to or in favor of any person, firm or corporation other than the parties hereto and the holders for the time being of certificates of deposit issued under or subject to the plan and agreement.

3. The depositors hereby irrevocably request the reorganization committee to carry into practical operation, and they hereby agree that the reorganization committee shall be and it is hereby vested with all rights, powers and authority necessary or proper to enable it to carry out the plan in its entirety, or in part, to such extent and in such manner and with such amendments, additions, changes, exceptions or modifications as the reorganization committee shall deem to be for the best interests of the depositors; and all powers that may be or may be deemed by reorganization committee to be necessary or proper for any of the purposes hereof, if not in this agreement expressed shall be implied.

Each and every holder of a certificate of deposit issued hereunder, for himself and not for any other, does hereby sell, assign, transfer and set over unto the reorganization committee and to its successors and assigns each and every bond and coupon deposited hereunder; and each and every depositor hereby agrees that the reorganization committee shall be and it hereby is vested with all the rights and powers of full and complete ownership of the bonds and coupons deposited hereunder, and of any claims against or obligations of the Cincinnati, Indianapolis & Western Railway Company (hereinafter called the "Railway Company"), or of the receivers of the Railway Company or against the Cincinnati, Hamilton & Dayton Railway Company, or its receivers or stockholders, or other property, at any time acquired by the reorganization committee.

Without in any manner limiting the foregoing provisions, the reorganization committee is hereby fully authorized, in its discretion, at any time or times, to call and attend any meeting or meetings of bondholders or creditors, however convened, and to vote the deposited securities, or any of them, at all meetings for anything whatsoever authorized by or necessary or helpful to effectuate or carry out the plan and this agreement or any modification thereof, or that may be deemed by the reorganization committee desirable for any such purpose; to use and do everything in respect of the deposited securities as fully and to the same extent as the owner or holder thereof; to instruct and direct the trustees of the mortgages securing the deposited bonds to exercise the powers or any of them, conferred by such mortgages, and to confirm in and give to said trustees all such powers as, in the judgment of the reorganization committee, may be necessary or advantageous in carrying out the plan; to possess and exercise each and every right, power and privilege conferred upon the holders of deposited bonds under the mortgages securing the same; to institute, intervene in, control, compromise or settle any suit, action or legal proceeding now pending or hereafter commenced or

threatened, in anywise affecting the deposited securities, or any of them, or the property of the Railway Company; to apply for or join with others in applying for or consenting to the appointment or removal of any receiver or receivers and for the termination of any receivership; to enter into any agreement or arrangement for decrees or orders for facilitating or hastening the course of litigation, or tending towards, or deemed by the reorganization committee in its discretion likely to promote the consummation of the plan; to purchase or to pay, compromise or settle, at any time or times and at such prices as it shall deem proper, any secured or other indebtedness of or obligation of or claim against the Railway Company, or any claims or demands or securities or property deemed by the reorganization committee important or advisable to be acquired in connection with the plan, or any receivers' certificates or obligations incurred by receivers, or any claims or demands which the reorganization committee, in its discretion, may deem it expedient and in the interest of the reorganization to purchase, pay, compromise or settle; to borrow money for any of the purposes of the plan or of this agreement, and by pledge, or otherwise, the deposited securities, any property purchased and any securities to be issued, or any part thereof, for the payment of any moneys borrowed; to give any and all bonds of indemnity or other bonds, and therewith to charge by pledge, or otherwise, the deposited securities, any property purchased and any securities to be issued, or any part thereof; to do whatever in the judgment of the reorganization committee may be expedient both to promote and procure the sale, as an entirety, of the property and franchises of the Railway Company, or separate sales of portions thereof; to adjourn any sale of any property or franchises, or any portion or parcel thereof; to bid or refrain from bidding, or to cause any one else to bid, at any sale, either public or private, either in separate parcels or as a whole, for any property or franchise, or any part thereof, whether or not owned, controlled or covered by or held as security or in trust for and for the benefit

of the deposited securities, or any of them, including or excluding any property, real or personal, and, at, before or after any sale to arrange and agree for the resale or lease of all or any portion of the property which it may desire to sell or lease; to hold any property or franchise purchased by or for it, in its name or in the name or names of any person or persons, firm or firms, corporation or corporations approved by it, for the purposes of the plan and of this agreement, and to apply the deposited securities, or any of them, or any cash or other property at any time held by or subject to the control of the reorganization committee, on account of or in satisfaction of any bid, whether made by it or by any person, firm or corporation approved by it, or towards obtaining funds for any payment on account or in satisfaction of any such bid; to consent to any corporate action by the Railway Company; to sign and file any written consent required or permitted by law to be signed, and, as the owner thereof, to use any or every deposited security for the purpose of carrying out the plan and this agreement; to exercise absolute discretion with respect to the amount, if any, to be bid or paid by the reorganization committee, or by its authority, for any property or franchise, and in case of a sale to others of any property or franchise, or otherwise, to receive, in its discretion, out of the proceeds of such sale or otherwise, any dividend in any form accruing or any of the deposited securities or on any property held by the reorganization committee; and to incur all expenses which the reorganization committee may deem judicious, including the expense of underwriting or procuring the underwriting of any securities of any company formed or utilized for the purpose of carrying out the plan of this agreement, and commissions to any syndicate or syndicates that it may deem advisable to form or cause to be formed or deal with in order to effectuate the purposes of said plan and this agreement.

Anything which anywhere in the plan or in this agreement it is provided that the reorganization committee may do or allow to be done, it may do or allow to be done by or through

such agents or agencies as it may determine, or by or through others, with its approval or consent or acquiescence, or it may contract with any person, firm or corporation that it shall be done or permitted to be done. The reorganization committee may assign and deliver all or any of the deposited securities, and may enter into any such contract or contracts with any person, firm or corporation, as it shall deem proper for the purposes of the plan and this agreement. Without limiting the foregoing provisions, the reorganization committee may negotiate and contract with any persons, firms, corporations or associations for the acquisition of property or equipment for use in the operation of the railroads or property which it is contemplated shall be acquired by the company or companies to be formed or utilized for the purpose of carrying out the plan of this agreement, or for obtaining or for granting trackage rights, traffic rights, terminal facilities, exchanges of property, interchange of traffic, or any other arrangement which it may deem necessary or desirable to obtain or to grant or make, including arrangements for merger, consolidation, purchase, sale or lease, and it may make contracts therefor, binding the company or companies to be formed or utilized for the purpose of carrying out the plan and this agreement. In the event that any property is purchased by or for the reorganization committee it may, in its discretion, exercise all powers as purchasers to approve, affirm or disaffirm all contracts or leases appurtenant to all or any of said property so purchased. And, generally, the reorganization committee may make and ratify such purchases, contracts, stipulations and arrangements as in its opinion will operate, directly or indirectly, to aid in the preservation, improvement, development or protection of any property now owned by the Railway Company or any property which the Railway Company shall have contracted to acquire, or any property acquired or contemplated to be acquired by or for the new company referred to in the plan, or for any purposes of the plan and of this agreement, and, generally, it may do any and all things which in the opinion of the reorganization com-

mittee will aid in the preservation, improvement or development of any property in which the Railway Company has or may have an interest, directly or indirectly, or to prevent or to avoid opposition to or interference with the successful execution of the plan and this agreement.

4. The reorganization committee may organize, or procure to be organized, one or more new companies, or it may adopt or use any company or companies, whether now existing or not, and it may cause to be made consolidations, increases of capital stock, creation and issuance of securities, leases, sales, purchases, agreements and other arrangements by or between any such companies or with other companies; it may make, or cause to be made conveyances or transfers of any properties or securities acquired by it or with its approval; it may cause the ownership of all or any property by any new or existing company to be either a direct ownership or ownership through bonds or through the shares of stock, or both, of any other company, and may cause a mortgage or mortgages securing bonds of any new or existing company to be either a direct lien upon any particular property, or a lien upon the bonds or shares of stock, or both, of any company owning such property; and the reorganization committee may take or allow to be taken such proceedings as it may deem proper for the purpose of creating the new securities provided for in the plan, and for carrying out all or any of the provisions of the plan and of this agreement. The reorganization committee is authorized to receive and dispose of, or to allow to be received or disposed of, by any other person or corporation, in accordance with any of the provisions of the plan and of this agreement, the new securities to be created; and it may vote, or cause or allow any person or corporation to vote upon, any or all of the stock of such new or existing corporation or corporations until the same shall be transferred or distributed, as contemplated in the plan, to the persons, firms or corporations entitled to receive the same.

5. The reorganization committee may construe the plan and this agreement, and its construction thereof or action thereunder in good faith shall be final and conclusive; it may supply any defect or omission or reconcile any inconsistency in such manner and to such extent as shall be deemed by it necessary or expedient to carry out the same properly and effectively, and it shall be the sole judge of such necessity or expediency; it may determine when and whether the assent of enough security holders shall have been obtained to warrant it in declaring the plan operative and effective or attempting to carry into effect the plan or any part thereof, and its determination in that respect shall be final, binding and conclusive upon all depositors and it may in its discretion declare the plan operative and effective. The reorganization committee may, before declaring the plan operative and effective, exercise the powers and authority upon it conferred by this agreement, in whole or in part, if it shall deem it advisable so to do; it shall have power, whenever it shall deem it proper, to alter, modify, depart from or abandon the plan and this agreement or any part thereof; it may at any time or times, after any such partial abandonment or after any modification, restore to the plan and this agreement any abandoned part or parts thereof, or discard any such modification or any part thereof, and it may seek to carry the plan and this agreement into effect as fully as if such part or parts had not been abandoned or such modifications made; it may also attempt to carry the plan and this agreement into effect, rather than to abandon or modify the same, even though it be manifest that, if consummated, the plan and this agreement must depart from the original plan and this agreement or from some part thereof. Any change or modification, when made by the reorganization committee, shall thereupon become and be a part of the plan and this agreement. In case, however, of intentional change or modification of, or departure from, the plan and this agreement not provided for in the plan, and which in the judgment of the reorganization committee shall materially and adversely



affect the depositors or any thereof, a statement of such change or modification or departure shall be filed with the depositary under the plan and with the depositary of the bondholders' committee, and notice of the fact of such filing shall be given as hereinafter provided in Article Eleven of this agreement, and within the period of fourteen days after the first publication of such notice any depositor may file notice, in writing, with the depositary under this agreement, of dissent from any such change or modification, and may surrender his certificate of deposit to the depositary issuing the same and withdraw, as the case may be, the securities, or the proceeds thereof or substitutes therefor, then under the control of the reorganization committee or otherwise subject to the plan and this agreement, to the amount indicated in such certificate of deposit, provided, however, that in every case of such surrender the holders of such certificates of deposit, severally and respectively, shall make payment of their pro rata share of the disbursements, expenses, liabilities and compensation of the reorganization committee, as fixed and determined by the reorganization committee and as apportioned by it between the various classes of deposited securities, and shall also make payment of their pro rata share of the disbursements, expenses, liabilities and compensation of the bondholders' committee. In case the reorganization committee shall not acquire the property covered by the first lien of the C. I. & W. mortgage or the property covered by the lien of the I. D. & W. mortgage, the committee is specifically authorized to modify the plan as therein provided, without notice to the depositors or any of them, and the depositors hereby specifically assent to the plan as so modified and hereby agree to be bound by the same. The said bondholders' committee shall assume as a charge upon the securities deposited with the depositary under the bondholders' agreement under which such committee is acting the proportionate amounts of the expenses and obligations incurred and to be incurred by the reorganization committee as shall be apportioned by the reorganization committee in its discre-

tion, and the amounts so apportioned shall be a charge and lien in favor of the reorganization committee upon the securities deposited with the depositary under the bondholders' agreement with the same force and effect as if the same had been incurred directly by such committee. Every such holder of a certificate of deposit, by such surrender and withdrawal, shall thereupon, without any further act, be relieved from the plan and this agreement, and shall cease to have any rights thereunder, and the exercise of such right of withdrawal shall release and discharge the reorganization committee and the depositary from all liability and accountability of every character to every such withdrawing certificate holder, except in so far as provision is hereinafter made in regard to cases where money has been paid in under the plan by depositors. Every depositor not so surrendering and withdrawing within said period of fourteen days after the first publication of said notice shall be irrevocably and conclusively deemed and taken to have assented to the proposed change or modification or departure, and, whether or not otherwise objecting, shall be bound and concluded thereby as fully and effectively as if he had actually assented thereto. All changes or modifications so made by the reorganization committee, as herein provided, shall be a part of the plan and of this agreement, and all provisions and references concerning the plan shall apply to the plan as so changed or modified. In every such case of surrender of certificates of deposit and withdrawal of securities represented thereby, any interest or dividends or moneys actually received by the reorganization committee or said bondholders' committee, as the case may be, on deposited securities withdrawn will be accounted for by the reorganization committee or said bondholders' committee, as the case may be, to the holders of such certificates of deposit.

This agreement is in all respects to be liberally construed, so as to enable the reorganization committee to carry into effect the plan, whether in the form hereto attached or as so amended, changed, modified or departed from. In case the reorganiza-

tion committee shall finally abandon the entire plan, either before or after the same shall have been declared operative, the securities deposited hereunder, or their proceeds, or any securities, claims or other property representative thereof, then under the control of the reorganization committee, shall be delivered or transferred to the several holders of certificates of deposit, in amounts representing their respective interests, upon surrender of their respective certificates and upon payment of their pro rata share of the disbursements, expenses, liabilities and compensation of the reorganization committee, as fixed and determined by it and as apportioned by it among the various classes of deposited securities and also upon payment of their pro rata share of the disbursements, expenses, liabilities and compensation of the bondholders' committee with which said securities were originally deposited. The reorganization committee may, in its discretion, limit the amount payable to it by the holders of certificates of deposit dissenting from any such modification of the plan, or, in the event of the abandonment thereof, to the amount payable as and for the compensation and expenses of the reorganization committee, in which event the depositors shall not be entitled to participate or share in any property of any kind or description acquired by or on behalf of the reorganization committee in connection with or by reason of any advances made to or liabilities incurred by it or with its authority for its account.

The words "expenses" and "liabilities," when used in this article, shall also be deemed to include any sums of money due to the syndicate mentioned in the plan in repayment of sums theretofore paid or advanced by it, and also all sums of money, securities or other property borrowed or owed by the reorganization committee, and all sums as security for the payment of which the reorganization committee shall have pledged or charged the deposited securities or any of them.

In case of the final abandonment of the entire plan, the reorganization committee shall apportion to the securities of each class deposited under or subject to the plan and this

agreement a share of such disbursements, expenses, liabilities and compensation fairly chargeable, in the opinion of the reorganization committee, to the securities of that class, and any such apportionment made by the reorganization committee shall be binding upon all depositors and shall be a charge upon the securities deposited under or otherwise subject to the plan and this agreement and the proceeds thereof respectively, according to the apportionment thus made.

In case of the final abandonment of the entire plan, any moneys paid by the depositors pursuant to the provisions of the plan and of this agreement, or any obligations, or securities, claims or property acquired therewith, or the proceeds thereof, when received, remaining after deducting therefrom the share of disbursements, liabilities and expenses incurred by, and compensation of, the reorganization committee and of the bondholders' committee, may be distributed as the reorganization committee, in its sole discretion, shall deem to be equitable among the respective holders of certificates of deposit issued hereunder or otherwise subject hereto. The reorganization committee shall not, however, be liable for the loss of any such money by it disbursed for the purposes of this agreement, nor for the depreciation in value of any property or securities by it acquired or received; and the depositors who shall have made payments pursuant to the plan shall have no claim for the repayment of any such moneys except to the extent of their respective shares (as apportioned by the reorganization committee) of such moneys remaining in the hands of the reorganization committee or under its control after payment of such disbursements, expenses, liabilities and compensation.

The reorganization committee, its successors and assigns, for any disbursements or expenditures made or liabilities incurred by or in respect of the reorganization or carrying out or furtherance thereof, and for its compensation and the compensation of such persons, firms or corporations (including the depository) as it may see fit to employ, shall have a lien upon all the deposited securities, upon all property and securities

acquired in the course of the reorganization, and, until their delivery or distribution, upon the new securities contemplated by the plan.

6. The reorganization committee may proceed under the plan and under this agreement, or any part thereof, with or without judicial sale, and, in case of judicial sale, it may exercise any power either before or after the sale. In every case all the provisions of the plan and of this agreement shall apply to and in respect of any property embraced in the reorganization and to and in respect of any securities representing any such property, it being intended that, for all purposes hereof, any such property and any securities representing such property may be treated or accepted by the reorganization committee as substantially identical.

In case, in the opinion of the reorganization committee, any other or separate plan shall be necessary or expedient to effect the reorganization of the property of the Railway Company or any part thereof, or for any consolidation or arrangement with, or for any sale, lease or purchase to or from, any company or companies now in existence or to be hereafter formed, the reorganization committee may promote or promulgate the same and may participate therein, and may deposit thereunder any securities thereby affected or to which such separate plan shall relate, or the reorganization committee may, upon notice given as provided in the Eleventh Article hereof, amend or modify the plan and this agreement in such manner as in its judgment will most effectually provide for such reorganization or for carrying out such other or separate plan; and may enter into any agreement with any other committee representing holders of securities of any class of the Railway Company as may be necessary or expedient for such purposes. In the case of any claim, lien or obligation not in the plan or in this agreement fully provided for, affecting the Railway Company or any of its properties or franchises from time to time, the reorganization committee may purchase or acquire the same or cause the same to be purchased or acquired, or make such

compromise in respect thereof or such provision therefor as it may deem suitable, using therefor any cash received under the plan, or any other resources or any securities not expressly required for settlement with the depositors.

7. Any action contemplated in the plan or authorized by this agreement may be taken or performed whenever the reorganization committee, in its uncontrolled discretion, shall deem advisable. Any such action may be taken by the reorganization committee, or by any one approved by it, at any time when it shall deem the reorganization advanced sufficiently to justify such course, and, as it may be necessary or expedient, the reorganization committee may defer, or permit to be deferred, the performance of any provision of the plan or of this agreement, or it may commit such performance to the new company or to any company used in the consummation of the plan, and may cause any such company to pay any indebtedness authorized or incurred by the reorganization committee, or otherwise, in furtherance of the plan, or to make or assume any obligations which, in the judgment of the reorganization committee, may be necessary or expedient to carry out the plan and this agreement.

The reorganization committee may, in its discretion, set apart and hold in trust, or permit to be set apart and held in trust, or may place in trust or permit to be placed in trust, any part of the new securities to be issued and any cash which may be received from sales of new securities, or otherwise, as it may deem suitable for the purpose of securing the application thereof for any of the purposes of the plan or of this agreement. From time to time, for the purpose of carrying the plan into effect, or of obtaining assents thereto, the reorganization committee, either generally or in special instances, may make or ratify, or permit to be made or ratified, contracts with any person, firm, syndicate, corporation or committee representing securities of any class, and, in its discretion, either generally or in special instances and upon such general or special terms or conditions as it may deem proper, it may

arrange to procure the deposit of any securities of any class, and by loan or guaranty or by the sale of new securities to be created or otherwise, on such terms and conditions and representations as the reorganization committee may deem proper, it may obtain or permit to be obtained any money or moneys required to carry out the plan, including such sums as the reorganization committee may deem expedient to provide for the uses of any company formed or utilized for the purpose of carrying out the plan and for the performance of any contract. The reorganization committee may charge, or permit to be charged, the deposited securities, or any of them, and the new securities to be issued, or any of them, and also may pledge, or permit to be pledged, the same, for the payment of any moneys borrowed, with interest thereon, for the performance of any other obligations incurred under the powers herein conferred.

The reorganization committee may employ counsel, depositaries, subdepositaries, agents and all necessary assistants, and may incur and discharge any and all expenses by it deemed reasonable for the purposes of the plan or for carrying out, or attempting to carry out the same, including the compensation and expenses of counsel and engineering and other experts, whether employed by it or not, and all compensation and expenses in any way connected with the Railway Company; also the expenses and reasonable compensation of the members of the reorganization committee and of the members of the bondholders' committee and its and their counsel, agents and employes, the depositary and all subdepositaries, and all expenses in connection with the preparation of the plan and this agreement, the issue of securities, the incorporation of any companies, and all legal and other expenses in any manner connected with the plan or this agreement or which it may deem expedient to incur in undertaking to promote any of the purposes thereof. The reorganization committee shall be the sole judge of the propriety and expediency of any and all compensation and expenses and of the amount thereof.

The reorganization committee may prescribe or approve the form or terms of all charters, regulations and by-laws of any corporations that may be utilized in the reorganization, and of all certificates of stock, bonds, notes, equipment obligations and other securities at any time to be issued and all mortgages and all other instruments at any time to be executed, and may make with any person or persons, firm or firms, corporation or corporations, syndicate or syndicates, any contracts or agreements in relation to or in anywise affecting the same. The reorganization committee may likewise create and provide for all voting and other trusts deemed by it to be expedient, and may nominate and appoint trustees thereunder. It shall have power to make equitable provision for any case of lost or destroyed bonds or coupons and to recognize and admit to participation in the plan and this agreement all bonds of the Railway Company issued or purporting to be issued under its first and refunding mortgage and all bonds issued or purporting to be issued by the Indiana, Decatur & Western Railway Company whether or not the legality or validity of said bonds may be questioned or contested and whether or not any of such bonds shall have been or shall be adjudged to be illegal or invalid, and to provide for and make or cause to be made such issues of scrip as may be necessary properly to represent any fractional interest in the new securities, and, to such extent as it shall deem necessary, it may distribute such scrip to the depositors, and may, in its discretion, settle for and adjust any such fractional interest in cash and credit or pay such cash to the depositors in lieu of distributing to them such scrip. In case it shall deem it advisable for any reason, the reorganization committee is authorized to issue or to cause to be issued temporary or interim certificates to represent the new securities or any of them. The reorganization committee may dispose of such of the new securities to be created and issued under the plan as may not be distributable under the plan and this agreement to holders of certificates of deposit issued thereunder or otherwise subject



thereto, by the sale or delivery or transfer of such new securities to such persons, firms, corporations or syndicates as the reorganization committee may select for that purpose and upon such terms and conditions as it may, in its uncontrolled discretion determine. It shall have power, from time to time, to fill any vacancy in its membership occasioned by death, resignation, or otherwise. It may, from time to time, add to its numbers to any extent deemed advisable by a majority of all members of the reorganization committee, and may, by the affirmative vote of a majority of its members, elect such additional member or members, and such additional member or members shall have all the powers and authority under this agreement that they would have had if they had been named herein as original members of the reorganization committee. It may act by a majority of its members either at a regular or special meeting, or by writing signed by such majority without a formal meeting. Any member may vote or act at any meeting, or otherwise, by attorney-in-fact duly appointed under any special power-of-attorney in writing, and any such attorney, but need not be, a member of the reorganization committee. A majority of the reorganization committee shall constitute a quorum. By a majority vote the reorganization committee may remove any member of the reorganization committee with or without cause.

The reorganization committee undertakes to endeavor to carry out the plan either in its original form or as modified, altered or departed from, but neither the reorganization committee nor the members thereof, nor the depositary, assumes any personal responsibility for carrying out the plan and this agreement, or any part of either nor for the results of any steps taken or acts done for that purpose, nor shall the reorganization committee or the members thereof, or the depositary hereunder, be personally liable for any act or omission of said reorganization committee, or said depositary, or of any agent or employe selected by them or either of them, nor for any error of judgment or mistake of fact or law, nor any acts

except for its or their own individual willful malfeasance, nor shall any member of the reorganization committee be personally liable for acts or defaults of any other member thereof or of the depositary.

The reorganization committee may act through any subcommittee or agent or otherwise, and may delegate any authority as well as discretion to any such subcommittee or agent, or otherwise, and the members of any such subcommittee, or any such agent, may be allowed a reasonable compensation for their services hereunder.

The members of the reorganization committee shall not be considered or taken, as between themselves, as partners, nor shall the reorganization committee or any of its members be taken or considered as partners with the depositors or any of the depositors, nor shall the depositors be taken or considered as partners with each other or with the reorganization committee or with any of the members thereof, either as between themselves or as to third parties. All acts performed and obligations and liabilities incurred by the reorganization committee, both as to the depositors and as to any person or persons, corporation or corporations dealing or contracting with the reorganization committee shall be deemed and considered to be the acts of said reorganization committee as a committee, and all or any person or persons, firm or firms, corporation or corporations dealing or contracting with said committee shall look alone to the securities deposited hereunder for the satisfaction and discharge of all obligations and liabilities so contracted or incurred by the reorganization committee, and shall not hold or attempt to hold the reorganization committee or any member thereof personally or individually liable or responsible therefor.

The reorganization committee shall be entitled to compensation for its services, the same to be fixed by it. It shall have the right to form or procure the formation of any syndicate or syndicates which it may deem necessary or advantageous for

carrying out the purposes, or any thereof, of the plan or of this agreement, and any of the members of the reorganization committee and the depository, or any corporation, partnership or association in which they or any of them are in any manner interested, may act as members or managers of such syndicate or syndicates and may be pecuniarily interested therein. The terms and compensation of any such syndicate shall be fixed by the reorganization committee, and as so fixed shall be binding and conclusive upon the depositors. The syndicate managers may receive compensation as such, and any syndicate managers or members who may be members of the reorganization committee or of the bondholders' committee, shall receive also compensation as members of the reorganization committee or of such bondholders' committee. Members of the reorganization committee or of such bondholders' committee or the depository hereunder, or any other depository, may make deposits of securities hereunder, and shall be entitled to the same benefits as any other depositors, and the members of the reorganization committee or of such bondholders' committee or the depository hereunder, or any other depository, or any depositor, without accountability in respect thereof, may be or become pecuniarily interested in any bonds, equipment obligations, stocks, contracts, property or matters which the plan or this agreement concerns or to which it relates, including participation in or under any syndicate agreement, whether or not mentioned in the plan as syndicate managers, members, subscribers or otherwise. The members of the reorganization committee, or any of them, may be incorporators, officers or directors or voting trustees of any company utilized in the reorganization, and the depository hereunder may be trustee under any new mortgage or trust indenture or equipment trust, lease or obligation.

Any direction given by vote of the reorganization committee certified by the secretary or by a writing signed by a majority of the reorganization committee shall be full and

sufficient authority for any acts of the depositary hereunder, or of any subdepositary or custodian, or any committee or agent. The depositary hereunder shall incur no liability for anything done or suffered to be done at the request or direction of the reorganization committee. The reorganization committee may at any time appoint a successor to the depositary, or may appoint any additional depositary or depositaries.

The compensation and expenses of the reorganization committee and of the bondholders' committee shall be paid as a part of the expenses of reorganization, and the compensation of such committees shall be conclusively deemed to be part of the expenses of the reorganization for all the purposes of the plan and this agreement. The accounts of the reorganization committee shall be filed within six months after the reorganization shall be determined by the reorganization committee to have been completed, with the depositary. Such accounts, when approved by an auditor appointed by the board of directors of the new company shall be final, binding and conclusive upon the depositors and upon all other parties having any interest therein, and upon such approval, whenever and however given, the reorganization committee shall be discharged, and all liability and accountability shall cease. The reorganization committee, or any subcommittee, may advise with counsel, and the opinion of counsel, acted upon in good faith, shall be full protection to the reorganization committee, or to such subcommittee, for anything done or suffered to be done in accordance with such opinion.

The acceptance of any new securities by any depositor shall estop such acceptor from questioning the conformity of such securities in any particular to any provision of the plan, and shall constitute full ratification by such acceptor of all acts and proceedings of the reorganization committee or of any other committee.

8. The enumeration of specific powers by this agreement conferred shall not be construed to limit or restrict the general

powers conferred by this agreement or intended so to be, and it is hereby districtly declared that it is intended by this agreement to confer on the reorganization committee (and the depositors hereby confer upon the reorganization committee in respect to all deposited securities and in all other respects) any and all powers which the reorganization committee may deem necessary or expedient, in its uncontrolled discretion, in or towards carrying out or promoting the purposes of the plan and of this agreement, and in any respect as now existing or as the same may be modified or amended, even though any such power be apparently of a character not now contemplated; and the reorganization committee may exercise any and every such power as fully and effectively as if the same were herein districtly specified and as often as for any cause or reason it may deem expedient. The method and means to be adopted for or toward carrying out the plan and this agreement shall be entirely discretionary with reorganization committee.

9. All securities deposited under or subject to the plan and this agreement, and all securities, claims and property purchased or otherwise acquired under the plan or this agreement, shall remain in full force and effect for all purposes, and shall not be deemed to have been merged, satisfied, released or discharged by any delivery of any securities, and no legal right or lien shall be deemed released or waived in respect of any such securities and property, and any judgment upon any claims including claims and judgments for deficiencies, and all liens and equities, shall remain unimpaired and may be enforced by the reorganization committee or its successors or assigns until paid or satisfied in full or expressly released by or with the consent of the reorganization committee, or its successors in interest; and the reorganization committee, or its successors in interest, or both, may in their discretion release the same or any thereof, either absolutely or upon such terms and conditions as they may prescribe.

Neither the reorganization committee nor any depositor, by becoming a party hereto, releases, surrenders or waives (except to or in favor of the reorganization committee) any lien, right or claim in favor of the securities deposited under or subject to the plan and this agreement, and all such liens, rights and claims shall vest unimpaired in the reorganization committee and (unless otherwise determined by the reorganization committee) in its assigns, transferees or successors in interest, severally and respectively, and any purchase or purchases by or on behalf of the reorganization committee, its nominee or nominees under any decree for the enforcement of any such lien, right or claim, shall vest the property purchased in the reorganization committee or in its said nominee or nominees, free from all interest or claim on the part of the depositors. No right is conferred nor any trust, liability or obligation (except the agreements herein contained in favor of depositors) is created by the plan or by this agreement, or is assumed hereunder or by or for any company formed or utilized for the purpose of carrying out the plan, in favor of any creditor or any holder of any of the securities of or claims against the Railway Company nor in favor of any company now existing or hereafter to be formed (whether such claims be based on any bonds, coupons, stocks, securities, liens, guaranties, notes, debts, or otherwise), in respect to any of the securities deposited or subject to the plan and this agreement or any moneys paid to or received by the reorganization committee or by any depositary hereunder, or in respect to any property acquired by purchase at any judicial sale or otherwise, or in respect to any new securities to be issued hereunder, or in respect to any other matter or thing whatsoever.

10. All moneys paid under or in respect to the plan and this agreement shall be paid to the depositary hereunder, or, if the reorganization committee shall so determine, the same may be paid to such subdepositary or subdepositories, agent

or agents, as the reorganization committee shall designate. Said depository and any such subdepositories or agent, severally and respectively, shall hold all such moneys subject to the check or order of the reorganization committee, and the reorganization committee is hereby expressly authorized to use the same or any part thereof, or to cause or permit the same or any part thereof to be used, for any of the purposes of the plan or of this agreement, at such time as in its discretion may be most convenient and as from time to time may be determined by the reorganization committee, its determination as to the propriety and purpose of any such application to be final and binding upon any of the depositors; and nothing in the plan shall be understood as limiting or requiring the application of any specific moneys to any specific purpose. Any obligation in the nature of floating debt or otherwise against the Railway Company or any property embraced in the plan either as proposed or as carried out, or any securities held as collateral for any such obligation, or any certificates of indebtedness, obligations or liabilities of the Railway Company may be paid, compromised, acquired, utilized or extinguished at such times, or be held by the reorganization committee, its nominee or nominees, for such period, and in such manner and upon such terms as it may deem proper for the purposes of the reorganization; but nothing in the plan or in this agreement contained is intended to constitute, nor shall any provision herein or hereunder constitute any liability or trust in favor or in respect of any such obligation.

11. All calls for the deposit of securities and payments to be made as provided by the plan or by this agreement, or for the presentation or surrender of certificates of deposit and all notices fixing or limiting any period for the deposit of securities or for such payments and all other calls or notices hereunder except when herein otherwise expressly provided shall be inserted in "the New York Times" and "the Sun" twice in each week for two successive weeks beginning on any

day of the week. In case the publication of either of said newspapers shall cease or be suspended, another newspaper or newspapers as the case may be, published in the City of New York, may be substituted in the place thereof. Any call or notice whatsoever, when so published by the reorganization committee, shall be taken and shall be considered as though personally served on all parties hereto and upon all parties to be bound thereby as of the date of the first insertion thereof, and such publication shall be the only notice required to be given under any provision of the plan or of this agreement and shall be sufficient for all purposes whether or not actually brought to the notice of any depositor.

12. The plan and this agreement shall bind and benefit the several parties, including the depositors and their and each of their survivors, heirs, executors, administrators, successors and assigns.

In witness whereof, the reorganization committee has caused this agreement to be duly executed in its behalf by a majority of its members and the depositors have become parties hereto in the manner hereinbefore provided as of the day and year first above written.

Frederick H. Ecker, Chairman.

[SEAL] J. Augustus Barnard, Henry E. Cooper, George  
K. Johnson, The Equitable Trust Company  
of New York, Depositary, by Lyman Rhoades,  
Vice-President.

Attest: Samuel Armstrong, Asst. Secy



**Form No. 85a****Decree Ordering Stock Assessment and Receiver to  
Collect Same**

COURT OF CHANCERY OF DELAWARE

John W. Cooney Co., Complainant,

v.

Arlington Hotel Co.,\* Defendant.

*Decree of Court*

On this day August 4, A. D. 1917, the petition of James Frank Ball, Aulick Palmer and Peyton Gordon, receivers appointed by this court for the said Arlington Hotel Company, praying, among other things, that this court levy an assessment on the stockholders of the said company requiring them to severally pay such amount of their several and unpaid subscriptions to the capital stock of the said company as the court shall ascertain to be necessary to pay the debts of the said corporation with interest, and the expenses incident to the winding up of said corporation's affairs by said receivers, having been filed in this cause on October 13, A. D. 1916, and on said date the chancellor having made an order directing that a rule of this court be issued directed to the stockholders of said company whose names appear on the list thereof attached to said petition to appear at a time in said order fixed, and show cause, if any they have, why the said assessment should not be made, and further directing that said rule and order with a copy of said petition, excluding the exhibits attached thereto, be served on those stockholders of said company who were residents of the State of Delaware and that the register in chancery give to all other stockholders of said company whose names appear on said list notice of said petition and of the rule and order by sending a copy thereof to each of said stockholders by registered letter addressed to his last known residence, or place of business, and mailed within six days from the date of said order;

\* John W. Cooney Co. v. Arlington Hotel Co. (1917), 101 Atl. 879.

And due proof having been made before the chancellor that service and notice of said rule and order had been made and given in compliance with said order;

And answers to said petition having been filed by Murray A. Cobb, Z. D. Blackistone, Albert L. Stavely, William H. Fenn and T. Coleman du Pont, whose names appear on said list as stockholders of said company, and no other stockholders of said company having appeared to said petition or rule, or filed any plea or answer thereto, or shown or averred any cause why the said assessment should not be made;

And the said petition and rule and the several answers thereto having come on to be heard by the chancellor upon testimony presented and taken orally in open court before the chancellor, and upon records and exhibits there produced, and the cause having been argued by the respective solicitors for said receivers and for said stockholders who had answered said petition, and the same having been duly considered and held under advisement until the date of this decree;

And it appearing to and being found by the chancellor from the record, proceedings and evidence in said cause and upon said petition and answers thereto, that the proof so taken together with the record of said cause, constitute full and complete evidence and proof of all of the findings of fact and fully support for all the findings of law and for the orders of the court in this decree contained;

And further, that the said Arlington Hotel Company is a corporation of the State of Delaware, and has been duly adjudged by this court in this cause to be insolvent; and that the said James Frank Ball, Anlick Palmer and Peyton Gordon have been duly appointed by this court and qualified as receivers of said company;

And further, that after due notice given to all of the creditors and stockholders of said company and after exceptions taken to certain claims filed in said cause by creditors of said company had been adjudicated, and the amount due the said creditors on their respective claims fixed and deter

mined by the chancellor as being the debts due by said company, the dividends allowed and decreed upon claims of said creditors in the suits in which receivers were appointed in the District of Columbia having been deducted from said claims, and that the following are the claims of creditors of the said company filed in this cause which have been so allowed by the chancellor as the debts due by said company in the amounts hereinafter stated, viz.: [Here was inserted a list of the creditors of the company and the amounts due them respectively, aggregating \$466,739.42.]

And further, that there are no funds or property of said corporation with which to pay the debts and claims, or any part thereof, except the moneys due to said corporation from the stockholders of the said corporation who have not paid in full for their shares of stock, and that an assessment or call should be made against said subscribers or holders of unpaid shares of stock of the said corporation to pay said debts and the expenses of the receivership;

And further, that the debts of said company which are unpaid as aforesaid aggregate the sum of four hundred and sixty-six thousand seven hundred and thirty-nine dollars and forty-two cents (\$466,739.42); that the interest to which creditors will be entitled will probably aggregate one hundred and forty thousand dollars (\$140,000); that the costs and expenses of the receivership and of collecting the assessment, including compensation for the receivers and their legal counsel, are estimated at one hundred thousand dollars (\$100,000); and that, therefore, the aggregate sum necessary to satisfy the debts of said corporation and to be assessed upon and collected from the stockholders who are liable therefor is seven hundred and six thousand seven hundred and thirty-nine dollars and forty-two cents (\$706,739.42);

And further, that the said creditors are entitled to have their said claims and demands against said company paid by an assessment to be made upon the shares of preferred and common stock of said company, and upon the holders

thereof, notwithstanding that the said creditors, or some of them, had at the time of extending credit to said company notice of the circumstances under which the shares of common stock were issued by said company as full paid and non-assessable;

And further, that the following is a list of the subscribers to the preferred stock of said company, who have not paid in full therefor, showing the number of shares subscribed for by each respectively, the aggregate of the payments made by any of them respectively, and the amount unpaid thereon respectively (the name of J. William Henry, a subscriber for fifty [50] shares, found to be a bankrupt, being omitted therefrom), and the aggregate of the amounts so stated as unpaid on said 5,802 shares of preferred stock being four hundred and seventy-nine thousand two hundred and ten dollars (\$479,210,000): [Here was inserted "Schedule A," showing the subscribers to preferred stock, number of shares, amount subscribed, amount paid and balance due.]

And further, that all of the authorized common stock of said company, aggregating three million dollars (\$3,000,000) had been issued without value given therefor, and that the amount remaining unpaid upon the common stock of said corporation is three million dollars (\$3,000,000), and that the persons liable to assessment as holders of such common stock, including those holding trust certificates for shares of said common stock, and the amounts, aggregating three million dollars (\$3,000,000), necessary to complete the amount of the par value of their shares and on which they are liable to assessment, are respectively, as follows: [Here was inserted "Schedule B," showing the subscribers to common stock, number of shares, amount subscribed and amount due.]

And further, than an assessment of twenty per cent. (20%) upon all holders of shares of stock of said company, both preferred and common, not paid for in full, being 5,802 shares of preferred and 30,000 shares of common stock, aggregating 35,802 shares, would equal about the said sum of seven hundred and six thousand seven hundred and thirty-nine dollars and

forty-two cents (\$706,739.42), estimated to be necessary for the payment of the debts of said company, with interest and the expenses of the receivership; that two of said persons named in Schedule A have paid more than twenty per cent. of their subscriptions to said stock, viz.: John F. Wilkins, a subscriber for two hundred and fifty shares, and John Auen, Jr., a subscriber for one thousand shares; and that therefore the said John F. Wilkins and John Auen, Jr., should not at this time be required to make further payments on account of their respective subscriptions to said preferred stock; that after deducting the shares of the said John F. Wilkins and John Auen, Jr., aggregating twelve hundred and fifty, the aggregate of said shares held by the subscribers mentioned in Schedule A is four thousand five hundred and fifty-two (4,552), and the aggregate of the shares of common stock is thirty thousand (30,000) shares; and that the aggregate of both kinds of said stock liability for said assessment for payment of said debts and receivership expenses is thirty-four thousand five hundred and fifty-two (34,552) shares;

And further, that said assessment should be equalized as near as may be between those stockholders who have paid in part for their shares and to the extent thereof, and those who have paid nothing therefor; and for this purpose that an assessment of twenty dollars and fifty-two cents (\$20.52) should be made on each of said thirty-four thousand five hundred and fifty-two shares; and those persons named in Schedule A who have made payments on account of their shares be credited with the amounts so paid by them, as against the amount which would otherwise be assessed against them as above stated;

And further, that the following, Schedule C, is a list of the persons who as holders of shares of stock of said company, both preferred and common, are liable to said assessment; that the said schedule shows the number of shares paid by them respectively, as shown by the books, records and papers of said company and in the testimony in this cause; and the amount due and payable from each of them by an assessment

of twenty dollars and fifty-two cents (\$20.52) upon each share of stock held by them respectively, a deduction, or credit, having been given to such stockholders who have made payments on their stock of the amounts so paid by them respectively, as shown by the above mentioned Schedule A: (Here was inserted "Schedule C," showing the subscribers to preferred and common stock, number of shares of each and amount of assessment.)

It is, therefore, adjudged, ordered and decreed by the court, as follows:

1. That the amount necessary to be raised to pay the principal of the claims of the creditors of the said Arlington Hotel Company found and allowed as aforesaid is four hundred and sixty-six thousand seven hundred and thirty-nine dollars and forty-two cents (\$466,739.42), and the estimated interest thereon to the date of payment is the sum of one hundred and forty thousand dollars (\$140,000), and the estimated costs and expenses of the receivership, including the collection of the assessments hereinafter levied for the payment of said claims, amount to the sum of one hundred thousand dollars (\$100,000), and the total amount necessary to satisfy the debts of the said corporation and said costs and expenses is the sum of seven hundred and six thousand seven hundred and thirty-nine dollars and forty-two cents (\$706,739.42);

2. And further, that it is necessary to assess the said last mentioned sum upon the shares of stock of said company which have not been paid for in full, and upon the holders thereof, or upon the legal representatives of such of them as may be dead; that for said purpose the said sum is hereby assessed and levied upon said shares of stock and upon the holders thereof, or the legal representatives of such of them as may be dead; that for the said purpose an assessment of twenty dollars and fifty-two cents (\$20.52) is hereby levied on each of said shares of stock, preferred and common, except the shares of preferred stock held by John F. Wilkins and John Auen, Jr., as hereinabove stated; that the holders of shares of preferred stock who have made payments on ac-

count thereof be credited as against said assessment with the amounts so paid thereon respectively as shown by Schedule A.

3. And further, that the foregoing list, called Schedule C, contains the names of the holders of said shares, preferred and common, the number of shares held by them respectively, and the amounts so assessed against them as aforesaid, the holders of shares of preferred stock who have made payments on account thereof having been duly credited therewith as against said assessment;

4. And further, that the said persons mentioned in said Schedule C, or the legal representatives of such of them as may be dead, pay to said receivers the said sums so assessed as stated in said Schedule C, within the time to be fixed herein;

Provided that with the consent of the receivers, or their solicitors, each and every stockholder liable under said assessment and levy who shall pay the amount assessed against him or them upon demand, or within the limit of time as hereinafter prescribed, shall be allowed a credit on the amount due as aforesaid of three per cent. (3%) upon his proportion of the amount so assessed and paid, which credit it is estimated would equal the proportionate share payable by each stockholder of the total amount of the estimated costs and expenses of the receivership, and the collection of the assessment, including compensation for the receivers and their legal counsel, and also for accruing interest.

5. And further, that the said receivers be and they are hereby authorized and directed to send within ten (10) days from the date of this decree by registered postpaid letter, addressed to each of the holders of shares of stock of said company as shown in said Schedule C, or to their legal representatives, a copy of this decree, with a demand for the payment on or before September 17, A. D. 1917, of the amounts severally due from them as shown by said Schedule C.

6. And further, that in the event that any person or corporation liable as shareholders of the company, or the legal representative of any of them that may be dead, shall fail to

pay the amount hereby assessed upon or against the share or shares of said stock, preferred or common, owned or held by him, or upon or on account of which he is liable, within the time hereinbefore specified, said receivers are hereby authorized and empowered to institute and prosecute such suit or suits, action or actions, or other proceedings against such person or persons, corporation or corporations, party or parties so liable, in any court having jurisdiction, whether in this state or elsewhere, as said receivers shall deem necessary or proper for the collection of the whole amount due from such persons or corporations, under the terms of this decree; and for the purpose of carrying on said suits, the receivers are hereby authorized and directed to employ such counsel in other jurisdictions and make such expenditures for costs in any of said suits as may reasonably be found to be necessary.

7. And further, that the title to said sums severally assessed as aforesaid against said shares of stock and against said stockholders or their legal representatives, and the right to sue therefor, is in the said receivers of said company.

And it appearing to and being found by the court that T. Coleman du Pont is the only stockholder of said company resident in the State of Delaware,

It is further adjudged, ordered and decreed that in the event that at the end of the period of time hereinbefore specified, the whole or any part of the said sum of seven hundred and six thousand seven hundred and thirty-nine dollars and forty-two cents (\$706,739.42) remains unpaid by reason of the failure of any person or corporation liable as shareholder of the Arlington Hotel Company to pay within said specified time the amount hereby assessed upon or against the share or shares of said stock, preferred or common, owned or held by him, or upon or on account of which he is liable, said receivers are hereby authorized, empowered and directed to give to the said T. Coleman du Pont written notice of that fact, and of the amount so remaining unpaid, and to demand and require the said T. Coleman du Pont to pay to said receivers, in addition to the amount hereinbefore assessed against



him on account of the shares held by him, the balance of the total sum of seven hundred and six thousand seven hundred and thirty-nine dollars and forty-two cents (\$706,739.42), or so much thereof as then remains unpaid by reason of such failure on the part of said other stockholders, which said sum of seven hundred and six thousand seven hundred and thirty-nine dollars and forty-two cents (\$706,739.42), or so much thereof as shall then remain unpaid, the said T. Coleman du Pont is hereby ordered and decreed to pay to the said receivers; and in default thereof for the period of thirty (30) days, the said receivers shall proceed to collect the same from the said T. Coleman du Pont by suit, or otherwise, as they may deem proper.

And further, that the said T. Coleman du Pont, upon payment of the said sum so remaining unpaid, shall (except as to the amount assessed against him) be subrogated to the rights of the said receivers, to have and recover, by way of contribution, from the persons or corporations liable for or on account of said shares of preferred and common stock, the sums respectively assessed upon and due from each of them under the assessment hereinbefore made and levied; and shall also have the right to institute and prosecute at his own expense, in the name of said receivers, but to his own use, any suit, action or proceeding for the recovery or collection of said sums so assessed as aforesaid, including any suit, action or proceedings brought by said receivers for said purpose, and shall be entitled to have any order of this court necessary to effectuate such purpose; and all sums, if any, that may subsequent to such payment by said T. Coleman du Pont, be received by said receivers from any such person or corporation, for or on account of such liability, shall be held subject to the further order of the court, and for the use of said T. Coleman du Pont.

9. And it is further adjudged, ordered and decreed, that said receivers be and they are hereby directed to hold all amounts collected under the terms of this decree subject to the further order of the chancellor herein.

(Signed) Chas. M. Curtis, Chancellor.

## FORMS OF ATTACHMENTS AND GARNISHMENTS

**Form No. 86****Order Appointing Commissioner to Hear Attachments  
and Garnishments**

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF  
OHIO, WESTERN DIVISION. IN EQUITY. No. 41

Bankers Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

*Entry Appointing Commissioner to Hearing Attachment and  
Garnishments*

It is now ordered by the court that Aaron A. Ferris, Esq., be and he hereby is made a commissioner of the court in this case for the purpose of hearing and considering and determining all garnishment and attachment proceedings taken or intended to be taken against any employe or other creditor of the receivers heretofore appointed herein in this cause, where the object is to attach or garnishee property in the hands or custody of said receiver or moneys due from them as such to their employes or other creditors.

It is further ordered that where it is desired or intended to institute such attachment or garnishment proceedings, all such claims shall be presented to said commissioner, and that upon said commissioner giving notice of such claim to said receivers, they shall forthwith notify the said employes of persons against whom said claim is presented of the same, and shall withhold from said employe or other creditor from moneys due them a sufficient amount to satisfy said claim, and that upon the order of said commissioner the same shall be paid over to said employe or other creditor of the receiver, or to said claimant, as said commissioner may direct and adjudge, and that said commissioner in case said claim or the right to maintain such attachment or garnishment proceedings be contested by said employe or other creditor of the receiver,

shall fix a time and place for the hearing thereof, giving due notice thereof to said claimant and said employe or other creditor of the receivers, and further, that said receivers do not appear to answer any garnishment or attachment proceeding against any employe or creditor of heirs, except as herein provided.

It is further ordered that persons wishing to prosecute such claims against employes or other creditors of the receivers shall transmit to said commissioner a statement thereof verified under oath, setting forth the nature of said claim and the date when and the cause for which the same was incurred, and the ground for attachment or garnishment, together with a fee of \$2, which amount of \$2 shall be deducted as costs from any money due said employe or amount due such other creditor of said receivers; and be returned to said claimant in case his claim and attachment be established, but in case said claim or attachment be not established, said sum of \$2 shall be retained by said commissioner as his costs, and said receivers are hereby directed to give notice by circular or otherwise of the entering of this order so that all persons desiring to institute such attachment or garnishment proceedings hereunder may have opportunity to avail themselves hereof.

It is further ordered that if anybody desire to institute legal proceedings against said receivers for any cause of action, claim or demand against the Cincinnati, Hamilton & Dayton Railway Company accruing prior to July 3, 1914 (date of receivership), the same shall be brought only by intervening petition in this cause, and that no proceeding in attachment or execution or other final process whatever may be issued against the said receivers otherwise than by leave first granted upon intervening petition in this cause.

**Form No. 87****Notice to Creditors to Present Claims to Commissioner.**

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY.

JUDSON HARMON AND RUFUS B. SMITH, RECEIVERS

CIRCULAR No. 3

Cincinnati, Ohio, August 14, 1914.

*Notice to Creditors and Employes and Other Creditors of  
the Receivers*

By order of the United States District Court, Southern District of Ohio, made and entered at Cincinnati, August 13, 1914, in the case of Bankers Trust Company, trustee, against the Cincinnati, Hamilton & Dayton Railway Company, the receivers were directed not to appear and answer to any garnishment or attachment proceedings against any employe or other creditor of the receivers except as provided in said order.

By said order Aaron A. Ferris, Esq., with offices at No. 709 Mercantile Library Building, Cincinnati, was appointed commissioner to hear and determine all garnishment and attachment proceedings taken or intended to be taken against any employe or other creditor of said receivers, where the object is to attach or garnish property in the custody of said receivers, or moneys due from said receivers, as such, to their employes or other creditors.

Any person or persons desiring to institute such garnishment or attachment proceeding are required to send or present to such commissioner any and all such claims, duly verified under oath, setting forth the nature of the claim, the date when the cause for which the same was incurred, together with the ground for attachment or garnishment; and shall deposit with said commissioner, on filing such claim, the sum of two dollars (\$2) on account of costs, which sum will be returned to the claimant in case his claim is sustained, and be deducted from any money due such employe or other cred-

itor of the receivers, with one dollar (\$1) additional to cover expenses of the commissioner; but in case such claim in attachment or garnishment be not sustained, said sum of \$2 shall be retained by the commissioner as his costs.

Upon the filing of such claims with the commissioner, on notice from him, money due the employe or other creditor of the receivers will be withheld in sufficient amount to satisfy such claim, until passed upon by the commissioner, and then paid as ordered by the commissioner.

In the case of contested claims, the commissioner will fix the time and place of hearing the same, due notice of which will be given.

NOTE. Each claimant, on filing claim with the commissioner, must be particular to specify the occupation and position of the employe, the division on which he worked and his post office address.

F. A. Deverell, General Auditor for Receivers.

F. M. Carter, Treasurer for Receivers.

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## Form No. 88

### Notice to Debtor by Receiver's Paymaster

THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY.

JUDSON HARMON AND RUFUS B. SMITH, RECEIVERS

Cincinnati, Ohio, ———.

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Dear Sir:—You were garnished on ——— day of ———, 19—, by ———, of ———, before Aaron A. Ferris, commissioner under appointment of the United States District Court, Southern District of Ohio, in the receivership case being ——— Office of Commissioner, No. 709 Mercantile Library Building, Cincinnati, Ohio.

The amount of plaintiff's claim is \$——; commissioner's costs, \$——.

If you dispute the plaintiff's claim, notify the commissioner to that effect in writing at once, at his address as given above, by signing and forwarding the blank form provided for that purpose at the bottom of this notice, and thereafter notice of the time and place of hearing and deciding as to the validity of the claim will be given by the commissioner through the paymaster's office.

Should you admit the validity of the claim, sign the blank form for that purpose also printed below and forward the same at once to the commissioner. Thereupon, on the order of the commissioner, his costs, as stated, will be deducted from any amount that may be due you, the remainder of such amount, so far as necessary, applied to plaintiff's claim and check in your favor for the balance, if any, will be sent to agent at station designated by you below.

Yours truly,

Geo. W. Lishawa, Paymaster for Receivers.

——, 19——.

Aaron A. Ferris, Commissioner, No. 709 Mercantile Library Building, Cincinnati, Ohio.

Sir:—I dispute the validity of plaintiff's claim as specified above, and desire to contest the same. Please notify me date and place of hearing the case in care of ——.

(Signature) ——.

——, 19——.

Aaron A. Ferris, Commissioner, No. 709 Mercantile Library Building, Cincinnati, Ohio.

Sir:—I admit the validity of plaintiff's claim as specified above, and consent to payment of same from amount due me when garnishment was filed, together with the costs, and request that any balance be forwarded to me by paymaster's check to agent at —— station.

(Signature) ——.

**Form No. 89****Publication of Notice of Attachment**

BEFORE AARON A. FERRIS, COMMISSIONER, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

A. B., Plaintiff,  
v.  
C. D., Defendant.

*Attachment Notice*

On the —— day of ——, A. D. 19—, the said commissioner issued an order of attachment in the above named action for the sum of \$—— for necessities and costs. The defendant is required to make answer before said commissioner, No. 709 Mercantile Library Building, Cincinnati, Ohio, on or before Saturday, May 1, 1915, or judgment may be taken against him.

——, Plaintiff.

By ——, his attorney.

Lima, Ohio, January 20, 1915.

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**FORMS IN CONTEMPT PROCEEDINGS****Form No. 90****Motion of Receiver for Rule in Contempt**

A. B., Plaintiff,  
v.  
C. D., Defendant.

*Motion for a Rule Against ——*

Now comes the receiver, ——, and reports to the court that since his appointment one —— has, without his knowledge or permission, deposited lumber on the property in his possession, and is about to construct bill boards in and upon

the premises in possession of your petitioner as receiver, and will so construct the same unless prevented by the order and direction of this court; that ——— claims to have a contract with some persons or corporation unknown to your petitioner, purporting to authorize him to construct and maintain bill boards on the premises now in possession of your petitioner as receiver.

Your petitioner, therefore, prays that a rule may be issued against the said ———, requiring him to show cause why he should not be attached for contempt for interfering with the possession of your petitioner in and to the property committed to his charge by the former order of this court.

———, Receiver of ———.

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## Form No. 91

### Entry Allowing Rule in Contempt

A. B., Plaintiff,

v.

D. F., Defendant.

### *Entry Allowing Rule in Contempt*

The receiver herein, ———, having filed with the clerk of this court a motion for a rule against ——— to require him to show cause why he should not be attached for contempt for interfering with the possession of said receiver, it is ordered that a rule be allowed herein against said ———, directing him to appear before this court on the ———, at ——— o'clock, and show why he should not be punished as for contempt for interfering with the possession of said receiver herein, in and to the property committed to him by the former order of this court.



**Form No. 92****Rule in Contempt Proceedings**

(Form under Civil Code Procedure)

State of ———, County of ———, ss.:

A. B., Plaintiff,

v.

C. D., Defendant.

*Rule in Contempt Proceedings*

To the Sheriff of ——— County, Ohio, Greeting:

You are hereby commanded to cite and give notice to ———, to appear before the Hon. ———, judge of the ———, in room No. ——— of said court on ———, 19—, at ——— o'clock, in the courthouse in the City of ———, County of ———, and State of ———, to show cause why he should not be attached as for contempt for interfering with the possession of property committed to the receiver in the above entitled cause.

And of this writ make due return.

Witness my hand and the seal of this court at ———, this ——— day of ———, 19—.

\_\_\_\_\_,  
Clerk of the ——— Court.

[SEAL]

By ———, Deputy.

**Form No. 93****Order Dismissing Contempt Proceedings**

A. B., Plaintiff,

v.

C. D., Defendant.

*Order Dismissing Contempt Proceedings*

This day this cause came on to be heard upon the motion for a rule against ———, the entry authorizing a rule against said ———, the rule and the testimony of witnesses, and upon

consideration by the court the court do find that said ——— should not be attached for contempt for interfering with the possession of the receiver heretofore appointed herein, and do, therefore, and hereby dismiss said ———.

It is therefore ordered and adjudged by the court that said ——— be and is hereby dismissed and the costs of these contempt proceedings to be paid by the plaintiffs out of funds in his hands as receiver.

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## FORMS IN SUITS AGAINST RECEIVERS

### Form No. 94

#### Leave of Court to Sue Receiver

A. B., Plaintiff,

v.

C. D., Defendant.

#### *Entry Granting Leave to Sue Receiver*

This day this cause came on to be heard upon the application of ——— for leave to bring proceedings in injunction against ———, as receiver of ———, was signed by counsel and submitted to the court.

Whereupon the court, upon consideration of the same, finds that said application should be granted, and it is therefore ordered that the said ——— be permitted to bring proceedings in injunction against the ——— as receiver as prayed for in their application.

**Form No. 95****Petition by Employe for Damages Against Receiver***Petition \**

(Filed April 23, 1912)

The plaintiff, for his cause of action, says:

That he now is and was, at the times hereinafter complained of, an alien and a subject of Austria-Hungary.

That the defendant, L. A. Cobb, now is and at the times hereinafter complained of, was the receiver of the Columbian Hardware Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio; that he was appointed such receiver by the District Court of the United States for the Northern District of Ohio, on or about October 18, 1910, and that he is now the duly appointed, qualified and acting receiver of said company, and as such receiver he now is, and at the times hereinafter complained of, was engaged in operating a factory for the manufacture of various products of iron located in the City of Cleveland, County of Cuyahoga, and State of Ohio, and in the northern district of said state.

Plaintiff says that on August 15, 1911, and for some time prior thereto, he was in the employ of the defendant as a common laborer; that said defendant also had in his employ, as a foreman, one John, whose other name is to this plaintiff unknown, and also had in its employ one Tony Smith, whose real name is Canto Sljukic; that in said factory the defendant had installed a large and heavy steam hammer; that, as a part of such hammer and attached thereto, were dies which were fastened to the said steam hammer by wedges; that from time to time, in the operation of such plant, it was required that such wedges be loosened from such dies, and for this purpose the said defendant had caused to be suspended by a chain attached above this steam hammer to the building

\* Record and Briefs No. 2,506, in the United States Circuit Court of Appeals, Sixth Circuit, L. A. Cobb, Receiver of The Columbian Hardware Company, a corporation, plaintiff in error, v. Ivan Sertic, defendant in error.

a large and heavy weight; that in removing such wedge some hard substance would be placed against the same and then the men employed by the defendant company would bring this heavy ram or weight against such substance, and thus loosen the wedge.

Plaintiff says that it was no part of his duty to assist in this work and that he had never been called upon to do it before; that on this particular day in question the said foreman, John, called the plaintiff and told him to get a tool to place against the wedge against which the weight or ram could be forced in loosening the wedge, and plaintiff says that he picked up a punch hammer, the only thing that he could see thereabouts which could be used for any such purpose, and held the same up and asked the foreman whether or not that would be all right, and thereupon the foreman said to this plaintiff that such punch hammer would answer the purpose and would be all right to use and told this plaintiff to hold the same against the wedge, and thereupon said foreman caused six men then in the employ of the defendant company to seize hold of the heavy weight and force the same with great violence against the punch hammer resting against the wedge.

Plaintiff says that such punch hammer had attached to it a wooden handle which he held in his hands in his attempt to hold the same against the wedge; that when the heavy weight or ram struck the punch hammer, because of the same being unfit for that purpose, the same jerked and the handle thereof was broken; that thereupon the foreman ordered this plaintiff to fix this hammer by placing one of the broken parts of the handle back into the hammer and again put it against the wedge. That at said time the six men were standing by the ram or heavy weight awaiting the order of the foreman, and that this plaintiff, acting under the immediate orders of this foreman, did place one of the broken parts of the handle in the hammer and did, under such immediate order, again put the hammer against the wedge, and

thereupon said foreman ordered and directed by direct and immediate orders, the men holding such weight or ram to force the same against the said hammer for the purpose of loosening the wedge with greater force than heretofore; that such men, in pursuance of such order, brought the weight against said hammer with great force and violence, and when the same struck such hammer said hammer flew off the wedge and struck this plaintiff in the forehead, striking him with great force and violence, fracturing his skull and leaving a decided depression therein at the point where the said hammer came in contact therewith. This depression of the skull is oval in form in the right frontal region and one and one-quarter inches in diameter and it involves the outer table of skull, the spongy middle portion, and also the inner table of the skull, and in consequence thereof he suffers nausea, his vision is affected, he experiences severe headaches and dizziness and a severe feeling of pressure at site of the injury, and by reason of this pain and suffering he is unable to sleep normally and is thereby caused great pain, mental agony and distress.

Plaintiff says that he did not know that such hammer was likely to slip off said wedge; that it was unsuitable for the purposes for which he was using it and relied on the direct and immediate order of the foreman and his assurance that it was the proper and suitable tool or appliance for the purpose for which it was being used, and he did not know that the foreman was about to cause said hammer to strike with so great a force or blow.

Plaintiff says that the defendant was guilty of negligence in failing to warn and inform him of the dangers of work and of the danger of such hammer slipping from such wedge and injuring him; that the defendant was negligent in ordering and directing him to hold such hammer on the wedge and in directing the men to strike the same with the ram or heavy weight; that it was negligence in furnishing to this plaintiff a tool or appliance wholly unfit

for the use to which this plaintiff was required to put it; that the defendant was negligent in causing the men to strike the hammer which the plaintiff held with such force and violence as to force the same out of the plaintiff's hands and against him.

Plaintiff says that said defendant was negligent through its foreman in compelling him under an immediate order to occupy a place of great danger without notice or warning to the plaintiff of such fact.

Plaintiff says that the defendant, acting by and through its servant and agent, the said foreman who was superior to the plaintiff, and whose orders the plaintiff was bound to conform to and obey, well knew that such hammer which this plaintiff was required to use was not fitted for that purpose and that the same would be likely to slip off and might strike some of the men working about the hammer, and well knew that it was dangerous for the plaintiff to attempt to hold this hammer on the wedge while the ram or heavy weight was to be brought against it so violently and the defendant failed to inform or warn this plaintiff of any such dangers or instruct him as to the manner in which this hammer should be held so as to minimize the dangers arising from the use of such tool or appliance in the conduct of the work; that by reason of such failure and negligence on the part of the defendant, and without fault or negligence on the part of the plaintiff, on or about August 15, 1911, the plaintiff was injured as aforesaid.

By reason of the injuries which the plaintiff received, as aforesaid, he has been caused great pain and suffering; he has been put to great expense for medical care and treatment; has been caused great loss of wages, and he is permanently injured by the pressure on his brain, and by the injury to his eyesight and by the constant pain which he has suffered and is suffering, which makes him restless and sleepless and unfit and unable to perform any manual labor, and by reason of said injuries he has been damaged in the sum of \$20,000.

Wherefore, the plaintiff asks judgment against the defendant in the sum of twenty thousand dollars (\$20,000.)

Reed & Eichelberger,  
Herman J. Nord,  
Attorneys for Plaintiff.

State of Ohio, Cuyahoga County, ss.:

Before me, a notary public in and for said county, personally appeared Ivan Sertic, who, being by me first duly sworn, on his oath says that he is the plaintiff in the above entitled action and that the allegations and averments contained in his foregoing petition are true as he verily believes.

Ivan Sertic.

Sworn to before me and subscribed in my presence this 18th day of April, 1912.

[SEAL]

John F. Tichy, Notary Public.

Charge fees, 40 cents.

Issue summons for the defendant in the above entitled action, returnable according to law. Endorse action for money only. Amount claimed is twenty thousand dollars (\$20,000.)

Reed & Eichelberger,  
Herman J. Nord,  
Attorneys for Plaintiff.

**Form No. 96****Summons Against Receiver\***

THE UNITED STATES OF AMERICA, NORTHERN DISTRICT OF OHIO,  
EASTERN DIVISION, SS.:

The President of the United States of America to the Marshal  
of the Northern District of Ohio, Greeting:

You are hereby commanded to notify L. A. Cobb, receiver of the Columbian Hardware Company, a corporation, that it has been sued by Ivan Sertie, in the District Court of the United States, within and for the Eastern Division of the Northern District of Ohio, and that unless it answers by May 25, A. D. 1912, the petition of the said plaintiff against it filed in the clerk's office of said court at Cleveland, in said division and district, such petition will be taken as true, and judgment will be rendered accordingly. You will make due return of this summons on May 6, A. D. 1912.

Witness, the Honorable William L. Day, judge of said court at Cleveland, in said division and district April 23, A. D. 1912, and in the 136th year of the Independence of the United States of America.

[SEAL]

B. C. Miller, Clerk.

By R. C. Dean, Deputy Clerk.

(Endorsement on summons when issued.)

No. 8336, United States District Court, Northern District of Ohio, Eastern Division. Ivan Sertie v. L. A. Cobb, Receiver, etc. Summons, action for money only. Amount claimed is twenty thousand dollars (\$20,000). Returnable May 6, 1912. Rule for answer, May 25, 1912. Reed, Russell & Eichelberger, Herman J. Nord, plaintiff's attorneys. Fifteen dollars deposited by plaintiff.

\* Record and Briefs No. 2506, in the United States Circuit Court of Appeals, Sixth Circuit, L. A. Cobb, Receiver of The Columbian Hardware Company, a corporation, plaintiff in error, v. Ivan Sertie, defendant in error.



(Endorsement on summons when returned.)

The United States of America, Northern District of Ohio, ss.:  
United States Marshal's Return.

Received this writ at Cleveland, Ohio, April 23, 1912, and on April 24, 1912, at Cleveland, Ohio, I served it on the within named L. A. Cobb, receiver of the Columbian Hardware Company, by delivering to him personally a true and certified copy hereof with all the endorsements thereon.

Marshal's fees: Service.....\$2.00

Travel, two miles..... .12

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\$2.12

Hyman D. Davis, U. S. Marshal.

By A. F. Owens, Deputy.

Returned and filed April 29, 1912.

B. C. Miller, Clerk, United States District Court,  
Northern District of Ohio.

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## Form No. 97

### Answer of Receiver in Personal Injury Suit\*

(Filed September 21, 1912)

The defendant, for answer to the petition, admits that he is the receiver of the Columbian Hardware Company, a corporation, which was engaged in operating a factory for the manufacture of various products of iron in the City of Cleveland, and that on or about August 15, 1911, the plaintiff met with an accident which caused him some injury, but the defendant, not being fully advised as to the nature and extent of the same, denies the allegations of the petition pertaining thereto.

The defendant denies each and every allegation therein contained not herein specifically admitted to be true.

\* Record and Briefs No. 2506, in the United States Circuit Court of Appeals, Sixth Circuit, L. A. Cobb, Receiver of The Columbian Hardware Company, a corporation, plaintiff in error, v. Ivan Sertic, defendant in error.

Further answering, the defendant says that such injuries as the plaintiff received were either directly caused or contributed to by the negligence or carelessness of the plaintiff himself.

Wherefore, the defendant prays to go hence and recover his costs.

Ford, Snyder & Tilden,  
Attorneys for the Defendant.

State of Ohio, Cuyahoga County, ss.:

L. A. Cobb, being first duly sworn, upon his oath says he is defendant in the above entitled cause of action and that the facts stated and allegations in the foregoing answer are true, as he verily believes.

L. A. Cobb.

Sworn to before me and subscribed in my presence this 20th day of September, A. D. 1912.

[SEAL]

H. Melvin Roberts, Notary Public.

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## Form No. 98

### Reply by Plaintiff in Suit Against Receiver

*Reply \**

(Filed October 15, 1912)

Now comes the plaintiff in the above entitled action, and replying to the answer of the defendant, he denies that the injuries which he received were in any manner, either directly caused or contributed to by his own carelessness or negligence, and he especially denies that his own carelessness or negligence

\* Record and Briefs No. 2506, in the United States Circuit Court of Appeals, Sixth Circuit, L. A. Cobb, Receiver of The Columbian Hardware Company, a corporation, plaintiff in error, v. Ivan Sertic, defendant in error.

in any manner caused or contributed to cause the injuries which he received.

Reed & Eichelberger,  
Herman J. Nord,  
Attorneys for Plaintiff.

State of Ohio, Cuyahoga County, ss.:

Before me, a notary public in and for said county, personally appeared Ivan Sertic, who being first duly sworn, on his oath says that he is the plaintiff in the above entitled action, and that the allegations and averments contained in his foregoing reply are true, as he verily believes.

Ivan Sertic.

Sworn to before me and subscribed in my presence this 14th day of October, 1912.

[SEAL]

John F. Tichy, Notary Public.

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## Form No. 99

### Charge of Court in Suit Against Receiver

#### *Charge \**

DAY, J. Gentlemen of the jury: The plaintiff in this case, Ivan Sertic, brings this action against the defendant, L. A. Cobb, receiver of the Columbian Hardware Company, and seeks by this action to recover compensation for the injuries which he claims were inflicted upon him by reason of the negligence of the defendant.

Now, it is in proof that Ivan Sertic is an alien, and that L. A. Cobb is the receiver of a corporation. That should make no difference whatsoever to you. United States courts give adequate jurisdiction and good, fair, free hearings to

\* Record and Briefs No. 2506, in the United States Circuit Court of Appeals, Sixth Circuit, L. A. Cobb, Receiver of The Columbian Hardware Company, a corporation, plaintiff in error, v. Ivan Sertic, defendant in error.

classes of men such as are indicated in these pleadings. This plaintiff has a right to bring this action, and the receiver has the same right to a full, fair consideration, at your hands, as two individuals in different stations.

Now, it is claimed that on August 15, 1911, the plaintiff was employed by the defendant. That in the factory of the defendant there was a large steam hammer; that a part of this hammer consisted of dies which were fastened in this steam hammer by wedges; that when these wedges were to be loosened, a ram and a tool known as a drift would be employed. Sertic claims that he never did any of the work required in loosening these wedges. That on the day of the injury the foreman in charge of the work, by name John, told him to get a tool to place against the wedge, which was to be loosened; that in response thereto, he picked up a tool known as a drift; that the foreman told him to use it and hold it against the wedge; that he did so, and six men using the device known as a ram struck the ram against this tool known as a drift; that when they did so the handle of the drift was broken; that later the broken handle was repaired; that the foreman again ordered him to place it against the wedge; that he did so, and that the men in charge of the ram, on the foreman's order, struck the ram against the drift perhaps several times; that thereupon the drift flew off the wedge, striking Sertic in the head and injuring him. He further claims that the drift was unsuitable for this kind of work; that he did not know that it was likely to slip off the wedge; that he did the work by reason of the direct order of the foreman.

The plaintiff claims that the defendant was negligent in failing to warn and inform him of the dangers of the work, in directing him to hold the drift and in directing the men to strike the wedge with the ram, in furnishing him with a tool which was unfit for the work for which he was required to put it, and in ordering the men to strike the ram with such force as to cause the drift to be forced out of his hands.

Plaintiff further claims that the defendant knew that this drift was not a suitable tool for the purpose for which it was used, and knew that it was dangerous for him to use it as he did. That the negligence of the defendant in these particulars was a direct cause of his injury.

Now, the defendant denies that he was in any way negligent, and says that if the plaintiff's injuries were caused to him, they were occasioned by his own negligence.

Now, gentlemen of the jury, it is admitted that the plaintiff did receive some injury and if he was hurt in consequence of the negligence of the defendant or its foreman, John, then he is entitled to recover, subject to the rules of law governing his own conduct, which I will later in this charge give to you, and which I hope you will bear in mind as I proceed with other defenses in this charge.

If you find under the rules of law which I will give you that the defendant was negligent and that Sertic was not exercising ordinary care for his own safety, he could nevertheless recover if his contributory negligence was slight in comparison to the gross negligence of the defendant. If you find that the defendant was negligent and the plaintiff, Sertic, guilty of contributory negligence, which was otherwise than slight in comparison to the negligence of the defendant, which would be gross, then he could not recover. So you must bear this in mind, gentlemen, if both parties were negligent, if Sertic's negligence was slight in comparison to the negligence of the defendant which you would find to be gross, he could still recover to some extent, as I will later explain to you. If both parties were negligent and Sertic's negligence was otherwise than slight in comparison to the negligence of the defendant, then he could not recover.

Now, gentlemen of the jury, negligence in law is want of ordinary care, and ordinary care is the kind of care which men of ordinary prudence are accustomed to exercise under the same or similar circumstances. Contributory negligence is the failure of the injured party to exercise ordinary care

for his own safety. It was the duty of the defendant, and its foreman, John, to use ordinary care in reference to the situation complained of, and of Sertic on his part, to use ordinary care for his own safety in drawing out or loosening these wedges. If Sertic was not familiar with the manner of doing this work; in the use of the drift and of the ram in removing these wedges, it was the duty of the defendant to warn him of the dangers, if any such dangers existed. It was the duty of the defendant to use ordinary care to provide Sertic with such tools as were reasonably safe and suitable for the work in which he was engaged at the time of the injury. The foreman, John, was under the obligation to use ordinary care in directing the work of loosening these wedges by the use of the ram and the drift. If Sertic was hurt wholly because of his own negligence, of course he could not recover. The defendant was not an insurer of Sertic's safety, and was only required to use ordinary care. It was not bound to insure the absolute safety of the appliances furnished for Sertic's use, but was only bound to use all reasonable care and prudence for Sertic's safety, by furnishing him with appliances reasonably safe and suitable for his use.

Now, gentlemen of the jury, inasmuch as Sertic brings this action, it is for him to establish by the preponderance of the evidence that the defendant was negligent, as claimed by him. By a preponderance of the testimony or the evidence, is meant the greater weight of all the evidence. In other words, that you are persuaded with the solemnness of the claim asserted by Sertic more satisfactorily than you are to the contrary.

In order for Sertic to recover in this action he must establish by a preponderance of the testimony, as I have used that term, that he was ignorant of the danger incident to the loosening of these wedges, the use of the wedge and the drift; that the foreman gave him a direct order to do this work; that this work was dangerous; that Sertic was not warned of these dangers, but directed to proceed with the

work which was such that any ordinarily prudent and cautious man would not order it to be done in that way, and that as a direct result of such conduct of the foreman Sertic was injured; or, he must establish by a preponderance of the testimony, as I have defined that term, that he, being ignorant of the method of doing this work to which he was assigned, the defendant or its foreman, failed to exercise ordinary care to furnish him with a tool which was reasonably safe and suitable for doing the work, and that as a direct result of which he was injured. Now, these are the facts which would have to be established by the plaintiff in order to establish the negligence of the defendant. Of course you must bear in mind, gentlemen of the jury, that in any event, if Sertic himself was not exercising ordinary care for his own safety, and that lack of ordinary care for his own safety was otherwise than slight in comparison with the gross negligence of the defendant, that he could not recover in this action.

Now, gentlemen of the jury, at the expense perhaps of some repetition, I wish again to say this: When Sertic was employed by the defendant, he was held, as a matter of law, to have assumed the risks of the ordinary dangers of the occupation into which he was about to enter, and also those risks and dangers which were known or were so plainly observable that the employe may be presumed to know them. And if such risks were assumed by Sertic when he went to work for the Columbian Hardware Company, and if he continued to work for the defendant under such circumstances, he took upon himself the risk of injury from such defects as I have just outlined to you.

Now, as I have said before, the law of Ohio is somewhat changed in reference to contributory negligence. Formerly the contributory negligence of the plaintiff, however slight, would prevent his recovery. Now, in such a case as this, the doctrine is otherwise. If the plaintiff, Sertic, was wanting in ordinary care for his own safety at the time of this injury, that is to say, if he did not conduct himself as men of

ordinary prudence under the same or similar circumstances are accustomed to conduct themselves, and that contributed to the injury received, then he would be guilty of contributory negligence. As the law now exists and which is the law under which this action is tried, if the contributory negligence of Sertic was otherwise than slight, in comparison to the gross negligence of the defendant, if you find that the defendant was negligent, then Sertic could not recover in this action and your verdict should be for the defendant. Or, if the negligence of Sertic was slight and the negligence of the defendant was gross in comparison, and you find these questions under the rules I have given you, then you would diminish the amount of damages which you would allow the plaintiff, Sertic, to recover from the defendant. The Columbian Hardware Company's receiver, in proportion to the negligence on his part, as compared to the negligence of the defendant, having found that gross, as you would necessarily have to do before you could apply this doctrine. In other words, you must find the plaintiff's negligence slight as compared to the gross negligence of the defendant. If you find as to the other questions in this action against the defendant by a preponderance of the evidence, as I have indicated to you, and if you find that Sertic's negligence was slight and the negligence of the defendant was gross in comparison, then, as I have said, you would reduce or diminish the amount of damages to which Sertic would be entitled by reason of the defendant's negligence, by such an amount which would be in proportion to the negligence attributable to him. Or, in other words, attributable to his contributory negligence as I have defined that term to you.

Now, gentlemen of the jury, if you find by a preponderance of the evidence that the defendant was negligent in the respects complained of, and that the negligence of the defendant, or its foreman, was the proximate, that is to say the immediate cause of the injury to Sertic, and if you also find that Sertic was free from negligence on his part, or if you



find that the contributory negligence of Sertie was slight and the negligence of the defendant was gross in comparison, you then will come to consider the question of damages. And in arriving at a determination of this question, you will consider the pain and suffering which he must have endured, as a direct result of this injury, the amount of suffering and his loss of capacity to work resulting directly from this injury; his loss of capacity to work both in the past and the future, in which capacity he would reasonably lose during the period of his probable life, and the pain and suffering which he would reasonably suffer in the future. All of these elements of pain and suffering and loss of capacity to work must, of course, be the direct result of this injury sustained before you consider them as elements of damages. But, if you have under this charge found for the plaintiff, you will consider how much, in your judgment, will fairly and fully compensate him for the injury which he has received, bearing in mind, of course, that if you find that his contributory negligence was slight, and the negligence of the defendant was gross, that you are to reduce the amount of your verdict accordingly under the directions which I have given you. If you find that an operation would probably have brought about a cure in Sertie's condition, that a man of ordinary prudence and caution would under similar circumstances have had such operation performed, then it was Sertie's duty to have had such operation performed, and in no event could he recover for the results of injuries which could reasonably have been avoided by him by using the degree of care I have just defined to you.

Now, you are here under oath to administer fair and even justice between the parties. You may appoint one of your number foreman, and you will be provided with blank forms of verdict and you will fill in such form of verdict as will indicate the result of your decision.

You may retire to your juryroom and then you may have your customary noon hour, bearing in mind the caution I

have heretofore given you in the trial. You may return at 1:30 o'clock, and go into your juryroom and take up the deliberation of this case.

Mr. Roberts: I would like for the court to charge the jury on a matter of contributory negligence—that if the jury should find that the negligence of the plaintiff equally weighs with the negligence of the defendant, that there then can be no recovery and there must be a verdict for the defendant.

The Court: It would naturally follow where I have given the comparison, slight and gross, if you would weigh them up evenly there would not be any difference between the two. It would follow directly that the plaintiff could not recover under those circumstances.

Mr. Roberts: That would likewise follow if the negligence of the plaintiff were greater than the negligence of the defendant, there must be a verdict for the defendant.

The Court: That would necessarily follow; I think the jury realize that under the charge I have given.

Mr. Nord: In regard to the assumption of risk, I think the court did not make it clear, that is, the plaintiff did not assume the risk of any injury of which he was ignorant.

The Court: I think the jury understand that; I charged them directly under the state of facts and I think they understand that. I charged the true state of facts under which he could recover.

Gentlemen, you may retire.

## FORMS IN INTERVENTION PROCEEDINGS

**Form No. 100****Motion to File Intervening Petition**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. IN EQUITY. No. 116

New York Trust Company and Elias J. Jacoby, Complainants,  
v.  
The Cincinnati, Findlay & Fort Wayne Railway Company  
et al., Defendants.

*Motion of Judson Harmon and Rufus B. Smith, Receivers of  
the Cincinnati, Hamilton & Dayton Railway Company,  
for Leave to File Intervening Petition Herein.*

Now comes Judson Harmon and Rufus B. Smith, receivers of the Cincinnati, Hamilton & Dayton Railway Company, by Morison R. Waite, their solicitor, and move the court for leave to file herein their intervening petition herewith submitted for the reason that they are interested in the above entitled cause as in said intervening petition moved, particularly set out and specified.

Morison R. Waite, Solicitor for Judson Harmon and  
Rufus B. Smith, receivers of the Cincinnati,  
Hamilton & Dayton Railway Company.

**Form No. 101****Order Allowing Intervention**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. IN EQUITY. No. 116

New York Trust Company and Elias J. Jacoby, Complainants,  
v.

The Cincinnati, Findlay & Fort Wayne Railway Company  
et al., Defendants.

*Order Authorizing Judson Harmon and Rufus B. Smith,  
Receivers of the Cincinnati, Hamilton & Dayton Railway  
Company to File Intervening Petition*

On presentation of the motion of Judson Harmon and Rufus B. Smith, receivers of the Cincinnati, Hamilton & Dayton Railway Company, for leave to file intervening petition, the court finds that said receivers have an interest, and leave is hereby given them to file said intervening petition.

On the filing of said intervening petition it is hereby ordered that the solicitor for said receivers shall notify the respective parties hereto or their solicitors that said intervening petition will be heard on February —, 1917, at 12 o'clock m., or as soon thereafter as counsel can be heard, which said notice to the counsel for complainants shall be given by telegraph.

Hollister, Judge.

**Form No. 102****Intervening Petition of Receivers of Railway in Foreclosure Suit**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. IN EQUITY. No. 116

New York Trust Company and Elias J. Jacoby, Complainants,  
v.

The Cincinnati, Findlay & Fort Wayne Railway Company  
et al., Defendants.

*Intervening Petition of Judson Harmon and Rufus B. Smith,  
Receivers of the Cincinnati, Hamilton & Dayton Rail-  
way Company*

Now comes Judson Harmon and Rufus B. Smith, receivers of the Cincinnati, Hamilton & Dayton Railway Company, and show to the court that by the order entered December 9, 1916, in the cause in this court wherein your petitioners were appointed receivers of the Cincinnati, Hamilton & Dayton Railway Company, entitled Bankers Trust Company, plaintiffs, v. the Cincinnati, Hamilton & Dayton Railway Company, defendant. In Equity No. 41, Consolidated Cause. The contract between your petitioners and F. N. B. Close, Sidney C. Borg, Henry F. Whitcomb and Albert H. Wiggin, as a committee for the protection of the first mortgage four per cent. twenty-year gold bonds of the defendant, the Cincinnati, Findlay & Fort Wayne Railway Company, hereinafter called the Findlay Company bearing date of July 26, 1916, was approved and confirmed, and your petitioners were ordered to continue the operation of the Findlay Company until February 1, 1917, unless sooner requested in writing by the committee to surrender possession thereof, and upon February 1, 1917, or on the earlier request in writing by the committee, your petitioners were directed to turn over to the trustees under said mortgage and the supplements thereto or their successors or the holders of the first mortgage bonds of the Findlay Company or their representatives or successors the railroad and

appurtenances of the Findlay Company then in existence and in the possession of the receivers (subject to existing liens thereon) including, if then determined or if not as soon as determination shall be made, the rolling stock and other equipment and the consideration for such as shall have been sold or disposed of by said receivers for a consideration or the cash value thereof in accordance with the terms of said contract. A copy of said contract and of said order so far as said order relates to the property of the Findlay Company are hereto attached and made part hereof as exhibits A and B respectively.

Your petitioners are anxious and ready to turn over said property of the Findlay Company in accordance with the terms of said contract and said order, and have so notified said committee of bondholders and the trustees under the mortgage, complainants herein, who have notified your petitioners that they are not yet ready to take over the property, and have requested the receivers to continue the operation thereof until March 1, 1917, or until such time prior thereto as there may be appointed a separate receiver for said property. Your petitioners are willing to continue the operation of said property for an additional month or shorter period as requested only provided they are properly secured against the loss and expense resulting from said operation. Said property has been constantly operated at a deficit during the time it has been operated by said receivers and prior thereto, and your petitioners anticipate that such deficit will continue during any further period that they may operate said property, and aver that if they be ordered to continue to operate the same after February 1, 1917, they should be protected against all loss and expense on account thereof.

Wherefore your petitioners pray that the court at this time grant the prayer of the bill of complaint herein in so far as it prays for the appointment of a receiver or receivers to take possession of the railroad property and franchises covered by the first mortgage and supplements thereto sought herein to

be foreclosed with power to operate said property, etc., as therein prayed, or for such other orders as may be necessary to carry out the said contract bearing date July 26, 1916, and order of court entered in the cause entitled Bankers Trust Company v. the Cincinnati, Hamilton & Dayton Railway Company, dated December 9, 1916, or in the alternative if your petitioners be ordered and directed to continue said operation that ample provision be made for their security and indemnification against all loss or expense by reason of such continued operation after February 1, 1917, and for all other necessary and proper relief.

(Signed) Judson Harmon, Rufus B. Smith,  
Receivers of the Cincinnati, Hamilton & Dayton Rail-  
way Company.

Morison R. Waite, Solicitor to said Petitioners.

State of Ohio, Hamilton County, ss.:

Judson Harmon, being first duly sworn, deposes and says that he is one of the receivers of the Cincinnati, Hamilton & Dayton Railway Company, and he believes the allegation of their foregoing petition to be true.

(Signed) Judson Harmon.

Sworn to before me and subscribed in my presence this January 30, 1917.

[SEAL] Clarence E. Barton, Notary Public, Hamilton  
County, Ohio.

COPY—EXHIBIT "A"

Agreement dated July 26, 1916, between Judson Harmon and Rufus B. Smith, as receivers of the property of the Cincinnati, Hamilton & Dayton Railway Company, under and by virtue of a certain order of the United States District Court for the Southern District of Ohio, dated July 2, 1914, and orders supplementary or ancillary thereto (hereinafter sometimes called the "Receivers"), parties of the first part, and F. N. B. Close, Sidney C.

Borg, Henry F. Whitcomb and Albert H. Wiggin, as a committee (hereinafter sometimes called the "Committees"), parties of the second part:

1. The committee represent as follows:

(a) That the committee are constituted a committee for the protection of the first mortgage four per cent. (twenty-year) gold bonds of the Cincinnati, Findlay & Fort Wayne Railway Company (hereinafter sometimes called the "Findlay Company") by the provisions of a certain protective agreement, dated December 17, 1914;

(b) That by virtue of the provisions of said protective agreement, the committee are the owners and holders of one million and twenty-two thousand dollars (\$1,022,000) principal amount of said bonds of the Findlay Company, with all appurtenant coupons maturing on and after November 1, 1914, out of a total outstanding issue of one million, one hundred and fifty thousand dollars (\$1,150,000) principal amount of said bonds and that the committee have full authority to make this agreement in respect of such bonds and appurtenant coupons so owned and held by them, and have full authority to make this agreement on behalf of, and binding upon, the owners and holders of said bonds who deposited the same with the committee under said protective agreement and the owners and holders of the certificates of deposit therefor issued by Bankers Trust Company under said protective agreement. The bonds so owned and held by the committee, with said appurtenant coupons, are hereinafter collectively called the "deposited bonds," and the said owners and holders who deposited the deposited bonds, as aforesaid, and the owners and holders of said certificates of deposit are hereinafter collectively called the "depositing bondholders."

2. The receivers have been operating the railroad line of the Findlay Company and the parties desire to settle various questions respecting the past and future operation of said line and other matters and claims hereinafter provided for.



Now, therefore, in consideration of the premises and of the mutual covenants hereinafter contained, the parties hereto agree as hereinafter set forth:

3. The committee for themselves, their successors and assigns, and for and on behalf of the depositing bondholders, and each of them, have remised, released and forever discharged and by these presents do remise, release and forever discharge said the Cincinnati, Hamilton & Dayton Railway Company and its receivers, of all and from all causes of action, suits, debts, dues, sums of money, claims and demands whatsoever, at law or in equity, and whether enforceable through, by or in the name of the committee or the depositing bondholders, or said the Cincinnati, Findlay & Fort Wayne Railway Company, or any trustee under any mortgage or deed of trust securing said bonds or anyone in their behalf, or anyone claiming through or as successors to them or to their rights or interests, which against said the Cincinnati, Hamilton & Dayton Railway Company or its receivers or its property, the committee or the depositing bondholders or any of them, or anyone in their behalf have ever had, nor have, or can, shall or may have, for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of the execution of these presents in respect of the deposited bonds and of any and all indebtedness, obligation or liability upon, or evidenced by, the deposited bonds, or any security therefor, or any guaranty or other agreement relating thereto, or any disposition of the proceeds of said bonds, or any lease or other agreement of whatsoever nature executed by said the Cincinnati, Hamilton & Dayton Railway Company, or any obligation or liability of said corporation or its receivers of any kind, except the obligations of the receivers hereinafter in this agreement specifically provided.

4. As promptly as possible after the execution of this agreement, the representatives of the committee (or, at the option of the committee, the representatives of the trustees under the mortgage securing the deposited bonds and the

supplements thereto) and the representatives of the receivers of the Dayton Company will meet and endeavor to make the following determination;

(1) What rolling stock and other equipment (including machinery and tools) belonging to the Findlay Company covered by the mortgage secured by said company to the Continental Trust Company and Elias J. Jacoby, dated November 1, 1903, and the supplements thereto, securing the deposited bonds, came into the actual possession of said receivers;

(2) Of such rolling stock and other equipment so coming into the possession of said receivers,

(a) What part is now in the actual possession of said receivers;

(b) What part has been disposed of or sold by said receivers for a consideration, and the amount of such consideration;

(c) What part has been lost or destroyed or abandoned, either by said receivers or otherwise, because worn out, obsolete or no longer of advantageous use in the operation of the railroad of the Findlay Company.

As promptly as practicable after the completion of such determination, or in the event that said receivers are then operating the railroad line of the Findlay Company as herein-after provided, then upon the discontinuance of such operation by said receivers, the receivers will surrender possession of, and turn over to the trustees under said mortgage and the supplements thereto, or otherwise as the court may direct, all rolling stock and other equipment (subject to any liens existing thereon superior to the lien of said mortgage and the supplements thereto) so determined to be of the character hereinabove specified in subdivision (a) of paragraph (2) of this Article 4 and pay or turn over (without interest) to said trustees, or otherwise as the court may direct, the consideration (or the cash value thereof) received by said receivers in respect of the property so determined to be of the character hereinabove specified in subdivision (b) of said paragraph. In the event that the determination hereinabove in the Article 4

provided can not be made by the representatives of the committee or of the trustees and the representatives of the receivers of the Dayton Company by reason of disagreement between them, then such determination shall be made by the court or in such manner as the court shall direct. So far as the rights and interests and claims of the committee and the depositing bondholders are concerned, there shall not be, anything herein contained to the contrary notwithstanding, any liability on the part of the Dayton Company or its receivers to the Findlay Company, the committee or the depositing bondholders or the trustee of any mortgage securing the deposited bonds, or anyone in their behalf, in respect of any property at any time belonging to the Findlay Company hereinbefore in subdivision (c) of said paragraph specified, or in respect of any property at any time belonging to the Findlay Company not in this agreement specifically provided to be turned over by said receivers.

5. Unless otherwise requested in writing by the committee, or unless the sale of the property of the Findlay Company under foreclosure of the mortgage securing the deposited bonds and the vesting of title in the purchaser or purchasers at such sale shall sooner be effected, the receivers shall continue their present operation of the railroad line of the Findlay Company until February 1, 1917, and the receivers covenant to make no claim against the Findlay Company or its property, for any deficit resulting from such operation prior to February 1, 1917, and further covenant that all valid claims against said company or its property resulting from such operation by them prior to said date have been or will be paid by them or caused by them to be paid. Upon February 1, 1917, or whenever requested in writing by the committee or whenever the property of the Findlay Company shall be sold upon foreclosure of said mortgage and title thereto shall be vested in the purchaser or purchasers at such sale, if said request or sale and vesting of title shall be effected prior to February 1, 1917, the receivers shall turn over to the trustees under said mortgage and the supplements thereto, or their successors,

or to the holders of the first mortgage bonds of the Findlay Company or their representatives or successors, the railroad and appurtenances of the Findlay Company then in existence and in the possession of the receivers (subject to existing liens thereon) and thereupon the receivers shall be relieved of all future operation of said line.

6. Nothing herein contained shall be held to require said receivers to surrender, or pay any money as or for or representing the proceeds of the bonds secured by said first mortgage of the Findlay Company not theretofore used for additions or betterments to the property of the Findlay Company, but it is understood that the releases in Article 3 hereof contained cover every claim of the committee and depositing bondholders to the money on hand and on deposit which has come to the possession of said receivers, as well as all other claims against said Receivers not herein specifically excepted.

7. All first mortgage four per cent. (twenty-year) gold bonds of the Findlay Company deposited with the committee under said protective agreement, dated December 17, 1914, shall, without further act or deed, become subject to all the provisions hereof with the same force and effect as if herein specifically included among the deposited bonds.

8. The agreement shall not be effective until the execution hereof by the receivers, shall have been approved and confirmed by the District Court of the United States for the Southern District of Ohio, but the parties hereto agree to recommend its approval to said court.

In witness whereof, the parties of the first part, and the parties of the second part or a majority thereof, have hereunto set their hands and seals as of the day and year first above written.

(Signed) Judson Harmon, Rufus B. Smith, as the  
Receivers hereinabove described.

F. N. B. Close, Sidney C. Borg, H. F. Whitcomb, A. H.  
Wiggin, as and for the Committee hereinabove  
described.

## EXHIBIT "B"

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. IN EQUITY. No. 41.  
CONSOLIDATED CAUSE

Bankers Trust Company, Complainant,  
v.  
The Cincinnati, Hamilton & Dayton Railway Company et al.,  
Defendants.

*Order Approving and Confirming Receivers' Contract with the Reorganization Committee of the Cincinnati, Indianapolis & Western Railway Company and with the Cincinnati, Indianapolis & Western Railroad Company, and Receivers' Contract with the Committee of the Holders of the Cincinnati, Findlay & Fort Wayne Railway Company First Mortgage Bonds.*

This cause came on to be heard this day on the petition of Judson Harmon and Rufus B. Smith, as receivers, for the approval and confirmation of a contract bearing date July 26, 1916, between said receivers, parties of the first part, Frederick H. Ecker, J. Augustus Barnard, Henry E. Cooper, George K. Johnson, H. F. Whitcomb, Albert H. Wiggin, L. Edmund Zacher, as the reorganization committee under a certain plan and agreement for the reorganization of the Cincinnati, Indianapolis & Western Railway Company, dated June 4, 1915, parties of the second part, and the Cincinnati, Indianapolis & Western Railroad Company, party of the third part, copy of which contract is attached to said petition, and after hearing Mr. Morison R. Waite, of counsel for said receivers, and Mr. Frank D. Cottle, of counsel for the United States Mortgage & Trust Company, trustee under the first mortgage of the Cincinnati, Dayton & Ironton Railroad Company, one of the complainants herein, in open court, at the first regular call at which said petition could be heard under the rules of court, due notice of said hearing having been

given to the complainants herein, and due consideration having been had, it is

Ordered that said agreement of July 26, 1916, between Judson Harmon and Rufus B. Smith, as receivers of the Cincinnati, Hamilton & Dayton Railway Company, parties of the first part, said Frederick H. Ecker and others, as the reorganization committee of the Cincinnati, Indianapolis & Western Railway Company, parties of the second part, and said the Cincinnati, Indianapolis & Western Railroad Company, party of the first part, be and the same hereby is approved and confirmed, and the said Judson Harmon and Rufus B. Smith, as receivers, are hereby authorized and directed to carry out the said agreement in accordance with its terms, and said receivers are authorized to deliver to the Cincinnati, Indianapolis & Western Railroad Company the five locomotives mentioned in said petition, numbered 334, 335, 336, 88 and 89, and also the six caboose cars mentioned therein, numbered 102, 105, 106, 109, 111 and 112, which said locomotives and said caboose cars were formerly the property of the Indiana, Decatur & Western Railway Company, and said receivers are further authorized through their auditor to make an equitable adjustment of the claims for rental of said locomotives and said caboose cars, and for repairs to said locomotives, with the Cincinnati, Indianapolis & Western Railroad Company acting by its auditor.

At the same time came on to be heard the petition of said receivers for the approval and confirmation of a contract bearing date of July 26, 1916, between them and the committee for the protection of the first mortgage four per cent. (twenty-year) gold bonds of the Cincinnati, Findlay & Fort Wayne Railway Company, a copy of which is attached to said petition as Exhibit B thereto, and after hearing Mr. Morison R. Waite, of counsel for said receivers and Mr. Frank D. Cottle, of counsel for the complainants, the United States Mortgage & Trust Company, trustee of the first mortgage of the Cincinnati, Dayton & Ironton Railroad Company, in open

court, at the first regular call at which said petition could be heard under the rules of the court, due notice having been given to each of the complainants herein, and due consideration having been had, it is

Ordered that the said agreement dated July 26, 1916, between Judson Harmon and Rufus B. Smith as receivers of the Cincinnati, Hamilton & Dayton Railway Company of the first part, and F. N. B. Close, Sidney C. Borg, Henry F. Whitcomb and Albert H. Wiggin, as a committee for the protection of the first mortgage four per cent. (20) year gold bonds of the Cincinnati, Findlay & Fort Wayne Railway Company by the provisions of a certain protective agreement dated December 17, 1914, parties of the second part, be and the same hereby is approved and confirmed, and the said receivers are hereby authorized and directed to carry out the said agreement in accordance with the terms thereof; that by a representative they will endeavor to determine with a representative of the committee, or at the option of the committee a representative of the trustee under the mortgage securing said bonds, the facts with reference to rolling stock and equipment provided in paragraph 4 of said agreement, and that they continue the operation of the property of the Cincinnati, Findlay & Fort Wayne Railway Company until February 1, 1917, unless otherwise requested in writing by the committee or unless the sale of the property of said railway under the foreclosure of the mortgage securing said bonds and the vesting of title in the purchaser or purchasers at such sale shall sooner be effected, and that upon February 1, 1917, or whenever requested in writing by the committee or whenever the property of the Findlay Company shall be sold upon foreclosure of said mortgage and title thereto shall be vested in the purchaser or purchasers at said sale, if such request or sale and vesting of title shall be effected prior to February 1, 1917, the receivers shall turn over to the trustees under said mortgage and the supplements thereto or their successors or the holders of the first mortgage bonds of the Findlay Company or their representa-

tives or successors the railroad and appurtenances of the Findlay Company then in existence and in the possession of the receivers (subject to existing liens thereon), including, if then determined, or if not, as soon as the determination shall be made, the rolling stock and other equipment and the consideration for such as shall have been sold or disposed of by said receivers for a consideration or the cash value thereof in accordance with the terms of said contract.

Hollister, Judge.

Cincinnati, Ohio, December 9, 1916.

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### Form No. 103

#### Order on Interveners' Petition in Foreclosure Suit

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. IN EQUITY. No. 116

New York Trust Company and Elias J. Jacoby, Complainants,  
v.

The Cincinnati, Findlay & Fort Wayne Railway Company  
et al., Defendants.

*Order on Intervening Petition of Judson Harmon and Rufus  
B. Smith, Receivers of the Cincinnati, Hamilton &  
Dayton Railway Company*

This cause came on to be heard this day on the intervening petition of Judson Harmon and Rufus B. Smith, receivers of the Cincinnati, Hamilton & Dayton Railway Company, pursuant to the order entered herein January 30, 1917. The court finds that due notice of said hearing was given to all parties in interest, and the court having heard from Mr. Andrew P. Martin, of counsel for the complainants, Mr. Lawrence Maxwell, of counsel for defendant, the Bankers Trust Company, trustees, and Mr. Morison R. Waite, of counsel for said intervening petitioners, and being fully advised:



Orders, adjudges and decrees that said petitioners, Judson Harmon and Rufus B. Smith, receivers, continue to operate the railroad of said defendant, the Cincinnati, Findlay & Fort Wayne Railway Company, until the March 1, 1917, or until such earlier date as may be fixed by further order of this court, and that all advances and expenses of or liabilities incurred by said receivers after crediting earnings and income on account of the operation of said railroad beginning this February 1, 1917, shall be considered and held and are hereby ordered and decreed to be entitled to payment in priority to any indebtedness represented or secured by the mortgage sought to be foreclosed herein upon the property of said the Cincinnati, Findlay & Fort Wayne Railway Company, or any part thereof, and upon any and all sums or amounts, if any, that may be due from said receivers to the trustees of the first mortgage of the Cincinnati, Findlay & Fort Wayne Railway Company or to any other party whom the court may direct under the terms of section IV of the agreement between said receivers and F. N. B. Close, Sidney C. Borg, Henry F. Whitcomb and Albert H. Wiggin as a committee for the protection of the first mortgage four per cent. twenty-year gold bonds of the defendant, the Cincinnati, Findlay & Fort Wayne Railway Company, bearing date July 26, 1916, which agreement was approved and confirmed by this court in the case wherein said receivers were appointed entitled "Bankers Trust Company, Plaintiff, v. the Cincinnati, Hamilton & Dayton Railway Company, Defendant. In Equity. No. 41. Consolidated Cause," by order entered December 9, 1916, a copy of which agreement and order is attached to said intervening petition of the said receivers herein as Exhibits "A" and "B" thereto. • •

Said receivers are authorized and directed on March 1, 1917, on such earlier date as may be fixed by such further order in this cause, to turn over to the trustees under the mortgage of that company sought to be foreclosed therein or their successors or holders of the bonds secured by said mortgage or representatives or successors, the railroad and appurtenances

of the Cincinnati, Findlay & Fort Wayne Railway Company then in existence and in the possession of the receivers (subject to existing liens thereon), including, if then determined, or if not, as soon as determination shall be made, the rolling stock and other equipment and the consideration for such as shall have been sold or disposed of by said receivers for a consideration or the cash value thereof in accordance with the terms of said contract after deducting from said consideration or cash value the amount of the advance expenses and liabilities of the receivers after deducting earnings and income growing out of said operation beginning this date.

(Signed) Hollister, Judge.

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### Form No. 104

#### Intervening Petition of Noteholder

IN THE UNITED STATES CIRCUIT COURT, NINTH JUDICIAL CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA. No. 11950

The Atlantic Trust Company, a Corporation, Plaintiff,

v.

The Woodbridge Canal & Irrigation Company, a Corporation,  
Defendant.

P. A. Buell & Company, a Corporation, Louis Einstein & Company, a Corporation, Fresno National Bank, a Corporation, Stockton Lumber Company, a Corporation, Kutner-Goldstein Company, a Corporation, Francis Cogswell, H. Bentley, Bank of Central California, a Corporation, J. H. Swain, Intervenors.

*Petition of Intervention of P. A. Buell & Co. et al.*

To the Justices of the Circuit Court of the United States for the Northern District of California:

I. The petition of intervention of P. A. Buell & Company, a corporation, of the City of Stockton; Francis Cogswell, H. Bentley, J. H. Swain and Stockton Lumber Company, a corpo-

ration, all of the County of San Joaquin, State of California; Fresno National Bank, a corporation, Kutner-Goldstein Company, a corporation, and Bank of Central California, a corporation, and Louis Einstein & Company, a corporation, all of the County of Fresno, State of California, respectfully shows:

II. That your petitioners, P. A. Buell & Company, Louis Einstein & Company, Fresno National Bank, Stockton Lumber Company, Kutner-Goldstein Company, Bank of Central California, at all times herein mentioned, were and now are corporations organized and existing under and by virtue of the laws of the State of California.

III. That at all times in this petition mentioned, the plaintiff, the Atlantic Trust Company, was and now is a corporation organized and existing under and by virtue of the laws of the State of New York, having its principal place of business in the City and County of New York, in said state, and being incorporated for the purpose and with the express powers of holding and managing trusts and trust property.

IV. That at all of said times the Woodbridge Canal & Irrigation Company was and now is a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal place of business in the City and County of San Francisco, and was formed for the purpose and with the express powers of owning and operating an irrigation canal in the County of San Joaquin in said state.

V. That heretofore, to wit, on or about July 17, 1891, the said defendant made and executed one hundred (100) bonds numbered from one (1) to one hundred (100), both numbers inclusive, each of which said bonds was in the form and in the words and figures set forth in the amended bill of complaint of plaintiff, and to each of said bonds were attached twenty (20) interest coupons likewise executed by the defendant, each of which coupons was in the form and in the words and figures as set forth in plaintiff's said amended bill of complaint and numbered as therein alleged.

That each of said bonds when so executed as aforesaid, bore endorsed thereon certificates in the manner and form as set forth in the plaintiff's said amended bill of complaint.

That on or about July 17, 1891, and to secure the payment of said bonds so executed as aforesaid, the said defendant executed and delivered to the plaintiff, as trustee of the trusts therein created, its indenture of mortgage dated July 17, 1891, and executed in its corporate name by its president and secretary, to which mortgage was affixed its corporate seal. And on or about the same day said mortgage was executed by plaintiff, who accepted said trusts therein created and imposed upon said plaintiff. And said mortgage was recorded on August 10, 1891, in the recorder's office of the County of San Joaquin, and was in words and figures as set forth in the plaintiff's amended bill of complaint.

VI. That in and by said mortgage the said Woodbridge Canal & Irrigation Company did mortgage to this complainant, as trustee, to secure the payment of the aforesaid bonds, the entire corporation property of said Woodbridge Canal & Irrigation Company, and all its lands, tenements, hereditaments, privileges, franchises, rights of way, flowage and riparian rights, easements and fixtures then owned or thereafter to be acquired by it and all its canals, flumes, headworks, gates, dams and bridges then constructed or to be thereafter constructed, extending from the point of diversion in the Mokelumne River, in the Town of Woodbridge, in San Joaquin County aforesaid, in a westerly direction to Taison and New Hope in said county, and in an easterly and southerly direction to the Calaveras River, with all other or branch canals that might be thereafter constructed within said territory south and west of the Mokelumne River; and all the estate, right, title and interest, claims and demands, rights of way and other easements, whether at law or in equity, of the said canal company of, in and to the same; and also all buildings, fixtures and personal property thereon or belonging to said canal company; and all receipts, incomes and profits which said company

shall derive on account of any contract or agreement for the transfer of water rights as appurtenant to specified lands, excepting the annual rentals for the use of said water and interest endorsed on such contracts or agreements.

VII. That on said July 17, 1891, and at the time of the execution of the said bonds and the said mortgage, M. V. B. Watson was the president and M. T. Moses was the secretary of the said Woodbridge Canal & Irrigation Company, and as such president and secretary they were duly and fully authorized and empowered to execute the said bonds and mortgage, in the name and as the act of the said Woodbridge Canal & Irrigation Company, and to attach to said bonds and mortgage its corporate name and to affix thereto its corporate seal, by resolution adopted by the vote of the holders of more than two-thirds of its capital stock at a meeting of its stockholders, duly and regularly called, notified, organized and held at the office of the Woodbridge Canal & Irrigation Company in the City and County of San Francisco, State of California, on July 11, 1891; and said president and secretary were further authorized to so execute said bonds and mortgage by resolution of the board of directors of the said Woodbridge Canal & Irrigation Company, duly passed and adopted.

That since the execution of said mortgage the Woodbridge Canal & Irrigation Company has constructed and now owns an irrigating canal in the County of San Joaquin, State of California, beginning at a dam in the Mokelumne River, in the Town of Woodbridge, in the southeast quarter ( $\frac{1}{4}$ ) of section thirty-four (34), in township four (4) north of range six (6) east, Mount Diablo base and meridian, and running thence through said section thirty-four (34) and through and across portions of sections three (3), ten (10), eleven (11), fourteen (14), twenty-three (23), twenty-six (26), thirty-five (35) and thirty-six (36), in township three (3), north of range six (6) east, and through and across portions of sections one (1), twelve (12) and thirteen (13), in township two (2), north of range six (6) east; and also through and across section eighteen

(18), in township two (2), north of range seven (7) east, and following the line of division between subdivisions fifty-one (51) and sixty-one (61) of El Rancho Del Campo De Los Franceses.

That the said Woodbridge Canal & Irrigation Company has likewise constructed and now owns and is operating sundry branch or lateral canals, diverting from said main canal above referred to, in a general westerly direction and irrigating the lands along their course.

That the Woodbridge Canal & Irrigation Company, since the execution of said mortgage, has likewise acquired and now owns various other lands and properties, contracts and mortgages in said County of San Joaquin and in the northern district of the State of California, a list of which properties is as set forth in said amended bill of complaint.

VIII. That ninety-two (92) of the aforesaid one hundred (100) bonds with said relative coupons attached, secured by said mortgage, have been by the said defendant duly issued and negotiated for value in due course, for money paid, labor done and property actually received, and are now outstanding, but the rights of the holders of twenty-six (26) thereof to share in the protection of the lien of the mortgage is disputed by the plaintiff and the holders of the sixty-six (66) bonds mentioned in the complaint.

IX. That on or about January 13, 1894, the said defendant, for labor done and property actually received, made, executed and delivered to the intervenor, P. A. Buell & Company, its certain promissory note, whereby it promised to pay to said intervenor on or before October 1, 1894, the sum of \$2,210.06, with interest thereon at the rate of eight per cent. per annum from date until paid, and as collateral security for the payment of said promissory note, the said defendant pledged to said intervenor four of its said bonds numbered 70, 71, 72 and 73, with all the interest coupons thereon, except those payable prior to September 1, 1894.

That no part of said promissory note, nor of either the principal or coupons of any of said bonds has been paid.

X. That on or about May 25, 1894, the said defendant for value received made, executed and delivered to the said intervenor, P. A. Buell & Company, its certain promissory note, whereby it promised and agreed to pay to said intervenor on or before October 1, 1894, \$1,000, with interest thereon at the rate of eight per cent. per annum from date until paid, and as collateral security for the payment of said promissory note the said defendant pledged to said intervenor two of its said bonds, numbers 86 and 87, with all the interest coupons thereon, except those payable prior to September 1, 1894.

That no part of said promissory note nor of either the principal of either of such bonds or of any of the coupons thereon has ever been paid.

XI. That on May 25, 1894, the said defendant, for value received, made, executed and delivered to the said intervenor, P. A. Buell & Company, its certain promissory note, whereby it promised and agreed to pay to said intervenor on or before October 1, 1894, the sum of \$1,559.74, with interest thereon at the rate of eight per cent. per year from date until paid and as collateral security for the payment of said promissory note the said defendant pledged to said intervenor three of its bonds, numbers 88, 89 and 90, with all the interest coupons thereon except those payable prior to September 1, 1894.

And no part of said promissory note nor of the principal of either of said bonds nor of the coupons thereon has ever been paid.

XII. That on August 4, 1894, the said defendant, for value received, made, executed and delivered to the said intervenor, P. A. Buell & Company, its certain promissory note, whereby it promised and agreed to pay to said intervenor on or before October 1, 1894, \$1,807.43, with interest thereon from date until paid at the rate of eight per cent. per year, and as collateral security for the payment of said promissory note the said defendant pledged to said intervenor three of its said bonds, numbers 93, 94 and 95, with all the interest coupons attached except those payable prior to September 1, 1894.

And no part of said note nor of the principal of either of said bonds nor of the coupons thereon has ever been paid.

XIII. That on February 19, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its promissory note, whereby it promised and agreed to pay to said Lee \$549.15 one year thereafter, with interest thereon from date until paid, at the rate of eight per cent. per year, and as collateral security for the payment of said note the said defendant pledged to said Lee one of its said bonds, number 69, with all the coupons attached except those payable prior to September 1, 1894.

And thereafter, and before this suit, for value, the said Lee indorsed, transferred and delivered said promissory note and said pledged bond to secure the same to the said intervenor, Fresno National Bank.

And no part of said note nor of said bond has ever been paid.

XIV. That on May 1, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its promissory note, whereby it promised and agreed to pay to said Lee the sum of \$1,312.55 one year thereafter, with interest thereon from date until paid at the rate of eight per cent. per year, and as collateral security for the payment of said note the said defendant pledged to said Lee one of its said bonds, number 83, with all the interest coupons attached except those payable prior to September 1, 1894. And thereafter and before this suit, said Lee, for value, indorsed, transferred, assigned and delivered said promissory note and said bond so pledged as aforesaid to said intervenor, Louis Einstein & Company.

And no part of said note nor of said bond has ever been paid.

XV. That on October 3, 1893, the said defendant, for value received, made, executed and delivered to the said intervenor, Stockton Lumber Company, its certain promissory note, whereby it promised and agreed to pay to said intervenor the



sum of \$1,000 one day thereafter, with interest thereon from date until paid at the rate of one per cent. a month, and as collateral security for the payment of said note the said defendant pledged to said intervenor two of its said bonds, numbers 51 and 52, with all their coupons attached, except those payable prior to March 1, 1894.

And no part of said note nor of either of said bonds has ever been paid.

XVI. That on April 17, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its certain promissory note, whereby it promised and agreed to pay to said Lee the sum of \$1,000 one year thereafter, with interest thereon from date until paid, at the rate of eight per cent. a year, and as collateral security for the payment of said note defendant pledged to said Lee one of its said bonds, number 75, with all its coupons attached except those payable prior to September 1, 1894.

XVII. That on April 17, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its certain promissory note, whereby it promised and agreed to pay to said Lee the sum of \$1,000 one year thereafter, with interest thereon at eight per cent. a year from date until paid, and as collateral security for the payment of said note defendant pledged to said Lee one of its said bonds, number 81, with all its coupons attached, except those payable prior to September 1, 1894.

XVIII. That on August 4, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its certain promissory note, whereby it promised and agreed to pay to said Lee the sum of \$702.11 one year thereafter, with interest thereon at eight per cent. a year from date until paid, and as collateral security for the payment of said note defendant pledged one of its said bonds, number 99, with all its coupons attached, except those payable prior to March 1, 1895.

XIX. That on August 4, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its certain

promissory note, whereby it promised and agreed to pay to said Lee the sum of \$1,000 one year thereafter, with interest thereon at eight per cent. a year from date until paid, and to secure the payment of said note defendant pledged to said Lee one of its said bonds, number 98, with all its coupons attached, except those payable prior to September 1, 1894.

XX. That on August 4, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its certain promissory note, whereby it promised and agreed to pay to said Lee the sum of \$1,000 one year thereafter, with interest at the rate of eight per cent. a year from date until paid, and as collateral security for the payment of said note the said defendant pledged to said Lee one of its said bonds, number 96, with all its coupons attached, except those payable prior to September 1, 1894.

XXI. That after the respective dates of the said five last-mentioned notes described in paragraphs 16, 17, 18, 19 and 20, said Lee, for value, indorsed, transferred, assigned and delivered said five (5) promissory notes above mentioned and the bonds to secure the same viz., numbers 75, 81, 99, 98 and 96, to the firm of Alexander & Goodman, and thereafter and before the commencement of this suit said Alexander & Goodman, for value, indorsed, transferred, assigned and delivered to said intervenor, Bank of Central California, the aforesaid promissory notes and the said bonds pledged to secure the same.

And no part of either or any of said promissory notes or of any of the said bonds has ever been paid.

XXII. That on May 25, 1894, the said defendant, for value received, made, executed and delivered to M. J. Lee its certain promissory note, whereby it promised and agreed to pay to said Lee the sum of \$1,000 one year thereafter, with interest thereon at eight per cent. a year from date until paid, and as collateral security, for the payment of said note, said defendant pledged to said Lee one of its said bonds, number 85, with all its coupons attached, except those payable prior to September 1, 1894, and thereafter, for value, said Lee indorsed, assigned,

transferred and delivered said note and bond to Alexander & Goodman, who thereafter and before the commencement of this suit, for value, assigned, indorsed, transferred and delivered to said intervenor, Kutner-Goldstein Company, said note and bond.

And no part of either said note or bond has ever been paid.

XXIII. That on October 30, 1893, for value received, the said defendant made, executed and delivered to said intervenor, Joseph H. Swain, its certain promissory note, whereby it promised and agreed to pay to said Swain the sum of \$665 on or before one year thereafter, with interest thereon at eight per cent. a year from date until paid, and to secure the payment of said note, said defendant pledged to said Swain one of said bonds, number 53, with all its coupons attached except those payable prior to March 1, 1894.

And no part of either said note or said bond has ever been paid.

XXIV. That on May 1, 1894, for value received, the said defendant made, executed and delivered to M. J. Lee its certain promissory note, whereby it promised and agreed to pay to said Lee the sum of \$1,000 one year thereafter, with interest thereon at eight per cent. a year from date until paid, and to secure the payment of said note said defendant pledged to said Lee one of its said bonds, number 82, with all its coupons attached except those payable prior to September 1, 1894.

And thereafter the said Lee, for value, indorsed, assigned, transferred and delivered said note and bond to the Bank of Lodi, a corporation, and thereafter and before the commencement of this suit, for value received, the Bank of Lodi indorsed, assigned, transferred and delivered the said note and bond to the said intervenor, Frances Cogswell.

And no part of either said note or bond has ever been paid.

XXV. That on February 13, 1894, for value received, the said defendant made, executed and delivered to said intervenor, H. Bentley, its certain promissory note, whereby it promised and agreed to pay to said Bentley the sum of \$581.05 on

October 1, 1894, with interest thereon at eight per cent. a year from date until paid, and to secure the payment of said note said defendant pledged to said Bentley one of its said bonds, number 68, with all its coupons attached, except those payable prior to September 1, 1894.

And no part of either of said note or said bond has ever been paid.

XXVI. That on August 4, 1894, for value received, the said defendant made, executed and delivered to the said intervenor, H. Bentley, its certain promissory note, whereby it promised and agreed to pay to said Bentley the sum of \$610.71 on October 1, 1894, with interest thereon at eight per cent. a year from date until paid, and to secure the payment of said note said defendant pledged to said Bentley one of its said bonds, number 92, with all its coupons attached except those payable prior to September 1, 1894, and no part of either said note or said bond has ever been paid.

XXVII. That on October 3, 1894, the plaintiff filed its bill of complaint to foreclose the mortgage of the defendant, and a receiver was duly appointed, and on December 14, 1895, the said plaintiff filed its amended bill of complaint, and after the time for appearance, the said defendant defaulted and neglected to appear and in due time the plaintiff had entered a rule taking its bill pro confesso.

XXVIII. That by its amended bill of complaint plaintiff sought to foreclose said mortgage, but claimed and alleged therein that only sixty-six (66) bonds had been issued by defendant, and that the bonds of your petitioner never had been issued, were void and were still owned by the defendant, and praying inter alia—

“That it be determined by the decree of this honorable court that said sixty-six (66) bonds hereinbefore mentioned were legally and lawfully issued and sold, and that the same are now outstanding and unpaid and that said court declare and adjudge that the entire principal sum of said sixty-six (66) bonds so issued and sold, is unpaid, due and payable; and that said court further, by its said decree, fix and determine the amount

of money due for principal and interest upon said bonds and enter judgment therefor against the said Woodbridge Canal & Irrigation Company in favor of your orator, as trustee for said holders of said sixty-six (66) bonds, and that this court further by its decree ascertain, fix and determine a reasonable and suitable attorney's fee for payment of the services of your orator's attorneys in this action; and further fix and determine the amount to be paid your orator as compensation for its services as trustee, and that your orator have judgment against the said Woodbridge Canal & Irrigation Company for the amount found due for principal and interest upon said sixty-six (66) bonds—for said attorney's fee, and the amount due your orator for its services as trustee herein, and costs and expenses of this action.

“That further by said decree, this court shall order all of said franchises, canals, lands, and other mortgaged premises and property, to be sold by the marshal of the said Northern Judicial District of the State of California at public auction, in accordance with law and with the course and practice of this honorable court; that the proceeds of said sale may be applied in the payment of the expenses of sale and of the costs in this action; and of said trustee's commissions, and counsel fees, and in the payment of the amount found due by this honorable court upon said outstanding bonds to the persons holding the same; that said defendant, and all persons claiming, or to claim by, through or under it, subsequent to the execution of said mortgage, either as purchasers, encumbrancers or otherwise, may be barred and foreclosed of all right, title, claim, or equity of redemption, in the said mortgaged property and premises, and every part thereof. That the complainant, or any other party to this suit, or any bondholder, may become a purchaser at such sale; that the marshal execute deeds to the purchaser or purchasers, and that said purchasers be let into the possession of the property bought by them, on production of such deed; and that it be further adjudged and decreed that any of said bondholders may be purchasers of said property or any portion thereof, and that they may be per-

mitted to pay for the property so purchased by them in the bonds held by such purchasers pro tanto, and that such other and further relief may be by said decree given in the premises as to this court shall seem meet and agreeable to equity."

And your petitioners further show that the plaintiff who is the trustee for all the bondholders of the defendant and whose duty it is to represent and protect all the bondholders, nevertheless refuses and neglects to represent and to protect petitioners, and attacks and assails the validity of said twenty-six (26) bonds of petitioners and refuses and has refused and will refuse to allow petitioners—the holders of said twenty-six (26) bonds—to share in foreclosure proceedings and in the proceeds of the sale of the property of defendant.

And therefore, your petitioners pray that they may be allowed to intervene and become parties to the above cause and that it be adjudged and decreed that their twenty-six (26) bonds issued by the defendant are good, valid and binding obligations of the defendant and are secured by the mortgage set forth in the complaint, and that the bonds of your petitioners be declared to be a valid and subsisting lien on the property, and franchise of defendant, and that the mortgage of defendant be foreclosed and that your petitioners be allowed their costs, disbursements and attorneys' fees for prosecuting this proceedings, and for such other and further relief as to equity may seem meet and as may be necessary to protect the rights of the owners of the said twenty-six (26) bonds secured by said mortgage.

Edward P. Cole and Wood & Levinsky, Solicitors for  
Petitioners.

(Endorsed) Service by copy of the within petition is hereby admitted this day, March 25, 1896.

Scrivner & Schell and John B. Hall, Solicitors for  
Complainant.

Service by copy of the within notice and petition is hereby admitted this day, March 25, 1896.

Daniel Titus, Solicitor for Defendant.

**Form No. 105****Order Allowing Intervention to Be Filed**

At a special session of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Friday, June 12, A. D. 1896. Present: Honorable Joseph McKenna, Circuit Judge.

Atlantic Trust Company,

v.

Woodbridge Canal & Irrigation Company.

No. 11950

*Order Allowing Intervention of P. A. Buell & Co. et al.  
to be Filed*

Ordered that the motion of P. A. Buell & Co. et al., for leave to file petition in intervention herein be, and hereby is, granted, J. J. Scrivner, Esq., counsel for complainant, being present and not objecting thereto.

**Form No. 106****Order Directing Decree in Favor of Interveners**

At a stated term, to wit, the March Term, A. D. 1897, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Northern District of California, held at the courtroom in the City and County of San Francisco, on Monday, April 5, A. D. 1897. Present: The Honorable William W. Morrow, Circuit Judge.

The Atlantic Trust Company,

v.

The Woodbridge Canal & Irrigation Company.

No. 11950

*Order Directing Entry of Decree in Favor of Buell & Co.  
et al., Interveners*

The issues joined herein between complainant and P. A. Buell & Co. et al., interveners, heretofore heard and submitted, having been fully considered, and the opinion of the court having been filed, it is ordered that a decree be entered herein in favor of said Buell & Co. et al., in accordance with the opinion filed.



**Form No. 107****Petition by Trustee of Mortgage to Foreclose in Receivership**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.

IN EQUITY. No. 41

Bankers Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

*To the Honorable, the Judges of the District Court of the  
United States, for the Southern District of Ohio:*

The petition of United States Mortgage & Trust Company, a corporation under the laws of New York shows,

It is the successor trustee under the first mortgage of the Cincinnati, Dayton & Ironton Railroad Company, a corporation under the laws of Ohio, executed and delivered on or about May 1, 1891, to the Central Trust Company of New York, a trustee, and covering all of its property, to secure an issue of its bonds to the aggregate amount of three million, five hundred thousand (\$3,500,000) dollars.

That subsequent to the execution and delivery of said mortgage the Cincinnati, Hamilton & Dayton Railway Company, defendant herein, was formed by the consolidation of the said the Cincinnati, Dayton & Ironton Railroad Company and two other railway companies. By such consolidation the said consolidated company acquired the right, title and interest of said Cincinnati, Dayton & Ironton Railroad Company in said property covered by said mortgage and duly assumed the payment of both principal and interest of the said bonds, all of which are outstanding.

That on or about November 1, 1914, May 1, 1915, and November 1, 1915, defaults were made in the payment of the installments of interest on said bonds due upon said dates; that, thereafter the Central Trust Company of New York, as trustee, did by notice in writing which was duly served on the

defendant, the consolidated company, duly declare the principal of all said first mortgage bonds immediately due and payable.

That no part of said principal or interest has been paid and the same is now due, owing and unpaid by the said consolidated company.

That the property covered by said mortgage is now in the possession of this court through its receivers appointed herein.

Your petitioner prays that an order may be made by this honorable court granting it leave to file bill of complaint in this court for the foreclosure of said mortgage and for such other and further relief in the premises as the nature and circumstances of the case may require and as to your honors may seem equitable and just.

United States Mortgage & Trust Company,  
By Harmon, Patterson, Wagle, Greenough & Day.  
Ernst, Cassatt & Cottle, Solicitors for Petitioner.  
L. C. Krauthoff, Sherman Day, Alfred C. Cassett, of Counsel.

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**FORMS IN SALES BY SPECIAL MASTER**

**Form No. 108**

**Final Decree Authorizing Sale of Property**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.

IN EQUITY. No. 115

The New York Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company, Bankers  
Trust Company and Central Trust Company of  
New York, Defendants.

*Final Decree*

This cause came on to be heard upon the bill of complaint of the New York Trust Company, as successor by merger to

the Continental Trust Company of the City of New York, the trustee named in the mortgage of the Cincinnati, Dayton & Chicago Railroad Company, dated April 1, 1892, the answer of the Cincinnati, Hamilton & Dayton Railway Company, successor by consolidation to the said the Cincinnati, Dayton & Chicago Railroad Company, the answer of Bankers Trust Company, the answer of Central Trust Company of New York and upon the proofs, and was argued by counsel, and thereupon, upon consideration thereof, the court being fully advised in the premises, and the defendant, the Cincinnati, Hamilton & Dayton Railway Company having consented in open court to the entry of this decree and the defendants, Bankers Trust Company and Central Trust Company of New York, appearing but not objecting thereto, finds, adjudges and decrees as follows:

1. The plaintiff at all times mentioned in that behalf in the various pleadings in this cause, was and still is a corporation duly organized and existing under the laws of the State of New York, and a resident and citizen of said state, and at all times so mentioned was, and now is, duly authorized and empowered under the terms of its charter to take and hold in trust the property transferred to it under the trust hereinafter stated, and to execute and perform each and all of the duties, terms and conditions of such trust.

2. The Continental Trust Company of the City of New York was, at and prior to, and for some time subsequent to April 1, 1892, to wit, until February 20, 1904, a corporation created and existing under the laws of the State of New York, and a resident and citizen thereof, and duly authorized and empowered under the terms of its charter to likewise take and hold in trust the property transferred to it under the trust hereinafter stated, and to execute and perform each and all of the duties, terms and provisions of such trust.

3. Said Continental Trust Company of the City of New York entered into an agreement of merger with the New York Security & Trust Company, a corporation organized and exist-

ing under the laws of the State of New York, on or about February 20, 1904, whereby said Continental Trust Company of the City of New York became merged into said New York Security & Trust Company, the said agreement of merger together with the verified copies of the proceedings of the stockholders' meetings of both said companies approving the same being duly filed in the office of the superintendent of banks of the State of New York and in the office of the county clerk of New York on March 8, 1904, as provided by law, as and of which date the agreement of merger became effective. Subsequently, pursuant to proceedings had in the Supreme Court of the State of New York, County of New York, the name of the New York Security & Trust Company was changed to the New York Trust Company, the name of the plaintiff herein.

4. The Cincinnati, Hamilton & Dayton Railway Company at all times mentioned in that behalf in the various pleadings in this cause was and still is a consolidated corporated organized and existing under the laws of the State of Ohio and a citizen and resident of that state and an inhabitant of the Southern District of Ohio, Western Division.

5. At all the times mentioned in that behalf in the various pleadings in this cause Bankers Trust Company was and still is a corporation organized and existing under the laws of the State of New York and a citizen and resident of said state and an inhabitant of the Southern District of New York, and was and still is the trustee named in and acting under the first refunding mortgage of the defendant, the Cincinnati, Hamilton & Dayton Railway Company, dated July 1, 1909.

At all the times mentioned in that behalf in the various pleadings in this cause the defendant, Central Trust Company of New York was and still is a corporation duly organized and existing under the laws of the State of New York and a citizen and resident of said state and an inhabitant of the Southern District of New York and was and still is the trustee named in and acting under the general mortgage of the

defendant the Cincinnati, Hamilton & Dayton Railway Company, dated July 1, 1909.

6. On or about July 12, 1895, the defendant, the Cincinnati, Hamilton & Dayton Railway Company was formed under the laws of the State of Ohio by the consolidation of the Cincinnati, Hamilton & Dayton Railroad Company, a corporation organized and existing under the laws of the State of Ohio, the Cincinnati, Dayton & Chicago Railroad Company, a corporation organized and existing under the laws of the State of Ohio, and the Cincinnati, Dayton & Ironton Railroad Company, a corporation organized and existing under the laws of the State of Ohio. By such consolidation, said consolidated corporation succeeded to the respective properties and assumed the respective liabilities of said constituent corporations to the same extent as if such duties and liabilities had been contracted by the defendant consolidated corporation, inter alia, the mortgage indebtedness of the Cincinnati, Dayton & Chicago Railroad Company hereinafter set forth.

7. Said the Cincinnati, Dayton & Chicago Railroad Company, at the time of the consolidation hereinbefore referred to, and up to and including the date thereof, was authorized to acquire, own and operate the mortgaged property and premises hereinafter mentioned, and to make, execute and deliver the first mortgage hereinafter set forth and to issue the bonds therein referred to.

8. On or about March 25, 1892, said the Cincinnati, Dayton & Chicago Railroad Company, being thereunto duly authorized by law, for the purpose of raising funds for its proper corporate purposes, authorized an issue of its five per cent. first mortgage gold bonds to the aggregate amount of one million two hundred thousand dollars (\$1,200,000), such bonds to bear interest at the rate of five per centum per annum, to be dated April 1, 1892, to be payable April 1, 1942, and to be in the form set forth in said first mortgage.

9. In pursuance of said authorization, and in the exercise of its lawful powers, said the Cincinnati, Dayton & Chicago

Railroad Company did thereafter execute its first mortgage bonds amounting in the aggregate to \$1,200,000, the principal amount of each of which bonds said the Cincinnati, Dayton & Chicago Railroad Company promised to pay to the bearer thereof at the office of the Continental Trust Company of the City of New York, or at its agency in the City of New York, in gold coin of the United States of America of or equal to the then standard of weight and fineness on April 1, 1942, and upon the presentation and surrender of the coupons thereto annexed as they respectively became due and payable, to pay interest in like gold coin on said principal sum at the rate of five per centum semi-annually on the first days of April and October in each year, free from taxes as provided in said first mortgage.

10. On or about April 1, 1892, in the due exercise of its corporate powers and all due corporate action first having been had, the Cincinnati, Dayton & Chicago Railroad Company, in order to secure the payment of the principal and interest of each and every of said bonds at any time issued and outstanding, duly made, executed and delivered to Continental Trust Company of the City of New York, its first mortgage, dated April 1, 1892, but actually executed, acknowledged and delivered April 28, 1892 (a true copy of which was annexed to said bill of complaint as a part thereof and marked Exhibit A) and thereby granted, bargained, sold, conveyed, assigned, transferred, set over, released and confirmed unto said Continental Trust Company of the City of New York, as trustee, and its successors in the trust thereby created, and assigns forever, the lines of railway property, rights, franchises and privileges described in said first mortgage, to have and to hold all and singular the said property and lines of railroad and their appurtenances and the rolling stock and equipment then owned or possessed or thereafter acquired by said the Cincinnati, Dayton & Chicago Railroad Company and all other premises, properties, rights, interests, franchises, revenues, tolls, incomes, immunities, privileges and other

things then owned or thereafter acquired by said railroad company, unto the said trustee, its successors and assigns, for its and their use, but in trust nevertheless for the equal pro rata use, benefit and security of all and every the persons, firms or corporations who should become or be the owners or holders of any of the bonds intended to be secured or any of the coupons appertaining thereto, without any preferences or priority of one bond over another, or others, by reason of priority in the time of issue or negotiation thereof, or otherwise, upon the terms and conditions and covenants in said first mortgage expressed or contained.

11. Said first mortgage was duly authorized, executed and delivered in all respects and in conformity with law, and was thereafter duly recorded in the offices prescribed by law for the recording of deeds in and for the counties of Allen, Van Wert, Mercer, Darke, Miami and Montgomery, respectively, in the State of Ohio, and said Continental Trust Company of the City of New York duly accepted the trust created in and by said first mortgage before the recording of the same as aforesaid.

12. Of the bonds secured by said first mortgage bonds of the aggregate principal amount of \$1,200,000 were made and executed and were duly authenticated by the endorsement of the Continental Trust Company of the City of New York, as trustee, in the manner and under the conditions provided in and by said first mortgage; and said bonds were subsequently acquired by the defendant, the Cincinnati, Hamilton & Dayton Railway Company, and the defendant, the Cincinnati, Hamilton & Dayton Railway Company, as the owner and holder of said bonds, desiring to negotiate and sell the same at a reduced rate of interest, entered into an agreement (a true copy of which was annexed to said bill of complaint as a part thereof and marked Exhibit B) with said Continental Trust Company of the City of New York, dated October 30, 1900, wherein it was provided that the interest upon said bonds should be reduced from the rate of five per cent. per annum to

four per cent. per annum, that the coupon sheets attached to said bonds, for \$25 each, should be cancelled, and new coupons prepared and attached calling for \$20 each, in lieu thereof, and that there should be stamped upon the face of each first mortgage bond an endorsement as follows:

“By agreement between the holders of this bond and the Cincinnati, Hamilton & Dayton Railway Company, the successor by consolidation of the Cincinnati, Dayton & Chicago Railroad Company, mortgagor, the interest on this bond has been reduced to four per cent. per annum, payable semi-annually, as per new coupons attached, the security of the mortgage and the benefits of the provisions thereof being retained.”

The said bonds were stamped as aforesaid, and new coupons for the reduced rate of interest were duly attached thereto, in lieu of the original coupons, all in accordance with said agreement, and the said bonds bearing interest at the reduced rate, and all of them, have been duly issued, negotiated and delivered to divers persons, who thereupon became bona fide holders thereof as purchasers of the same for value, and all of said \$1,200,000 principal amount of said bonds are now outstanding and are valid and subsisting obligations of the Cincinnati, Dayton & Chicago Railroad Company and its successor by consolidation, the defendant, the Cincinnati, Hamilton & Dayton Railway Company.

13. It was provided in and by Article 5 of said first mortgage that in case said the Cincinnati, Dayton & Chicago Railroad Company, now the defendant, the Cincinnati, Hamilton & Dayton Railway Company, should make default in the payment of any interest moneys mentioned in the said bonds and coupons attached or any or either of them, when the same became due and was demanded, and if such default should continue for a period of four months after such demand, the trustee under said first mortgage might, and upon the written request of the holders of a majority in amount of the said bonds then outstanding should, declare the principal of all the bonds secured by said first mortgage, then outstanding, to



be, and the same should thereupon become immediately due and payable.

14. The Cincinnati, Hamilton & Dayton Railway Company and the Cincinnati, Dayton & Chicago Railroad Company defaulted in the payment of the interest due October 1, 1914, and in the payment of the installments of interest due and payable in April and October of each year subsequent thereto, notwithstanding payment thereof was demanded and coupons representing such interest were duly presented, attended by an offer to surrender the same upon payment of the sums due; and the plaintiff, the New York Trust Company, in accordance with the terms of said first mortgage, and pursuant to the demand in writing of the owners and holders of a majority in amount of the bonds then outstanding, on December 24, 1915, on account of the defaults of payment of the interest due October 1, 1914, and April 1, 1915 (said defaults having continued for a period of more than four months after demand), duly declared the entire principal of said first mortgage bonds to be due and payable.

15. On or about July 2, 1914, this court under a bill of complaint in equity filed by Bankers Trust Company, as trustee under the first and refunding mortgage of the Cincinnati, Hamilton & Dayton Railway Company, dated July 1, 1909, against the Cincinnati, Hamilton & Dayton Railway Company in the District Court of the United States for the Southern District of Ohio, Western Division, by an order dated July 2, 1914, appointed Judson Harmon and Rufus B. Smith, receivers of all and singular the railroads, lands, property, assets, rights and franchises of the defendant, the Cincinnati, Hamilton & Dayton Railway Company, in said order mentioned, including the property subject to the lien of said first mortgage herein decreed and ordered to be foreclosed. On or about July 2, 1914, said Judson Harmon and Rufus B. Smith duly qualified as such receivers, and entered into possession of said property, and still are in possession thereof under said order.

16. That there are due from the Cincinnati, Hamilton & Dayton Railway Company, and payable to the plaintiff as trustee under the first mortgage from the Cincinnati, Dayton & Chicago Railroad Company to the Continental Trust Company of the City of New York, for the holders of the bonds and coupons issued thereunder, the following sums:

Installment of interest on coupons due October 1, 1914 .....	\$ 24,000.00
Interest thereon from October 1, 1914, to the date of this decree at the rate of four per cent. per annum .....	2,453.33
Installment of interest on coupons due April 1, 1915 .....	24,000.00
Interest thereon from April 1, 1915, to the date of this decree at the rate of four per cent. per annum .....	1,973.33
Installment of interest on coupons due October 1, 1915 .....	24,000.00
Interest thereon from October 1, 1915, to the date of this decree at the rate of four per cent. per annum .....	1,493.33
Principal .....	1,200,000.00
Interest thereon from October 1, 1915, to the date of this decree at the rate of four per cent. per annum .....	74,666.67
<b>Total .....</b>	<b>\$1,352,586.66</b>

No proceedings have been had at law or in equity for the collection or enforcement of said mortgage debt, or any part thereof, save only this suit.

17. On or about July 1, 1909, the defendant, the Cincinnati, Hamilton & Dayton Railway Company, in the due exercise of the powers and authority by it in that behalf possessed, due corporate action having first been had, authorized the issue from time to time of its first and refunding mortgage four per cent. fifty-year gold bonds, limited to the aggregate

principal amount of \$75,000,000 at any one time outstanding, and to secure the payment of said bonds from time to time issued, executed and delivered its mortgage or deed of trust to Bankers Trust Company, as trustee, known as its first and refunding mortgage, bearing date July 1, 1909, whereby it granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over unto said Bankers Trust Company the real and personal property described in said first and refunding mortgage, including the lines of railway and other property in Article 37 of this decree described. The defendant, the Cincinnati, Hamilton & Dayton Railway Company, from time to time has made and executed its first and refunding mortgage bonds under said first and refunding mortgage, in the aggregate principal sum of \$29,190,000, and no more, all of which (except \$19,000 principal amount thereof) are outstanding in the hands of bona fide holders for value. The interest or lien of said Bankers Trust Company, as trustee under said first and refunding mortgage, in and to the property hereby ordered and decreed to be sold, is subsequent and junior to the right, title and interest of the plaintiff herein and to the lien of said first mortgage.

18. On or about July 1, 1909, the defendant, the Cincinnati, Hamilton & Dayton Railway Company, in the due exercise of the powers and authority by it in that behalf possessed, due corporate action having first been had, authorized the issue from time to time of its general mortgage bonds, limited to the aggregate principal amount of \$20,000,000 at any one time outstanding, and to secure the payment of said bonds from time to time issued, executed and delivered its mortgage or deed of trust to Central Trust Company of New York, as trustee, known as its general mortgage, bearing date July 1, 1909, whereby it granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over unto said Central Trust Company of New York the real and personal property described in said general mortgage,

including the lines of railway and other property in Article 37 of this decree described. The defendant, the Cincinnati, Hamilton & Dayton Railway Company, from time to time has made and executed its general mortgage bonds under said general mortgage in the aggregate principal sum of \$17,736,000, and no more, all of which are outstanding in the hands of bona fide holders for value. The interest or lien of said Central Trust Company of New York, as trustee under said general mortgage, in and to the property hereby ordered and decreed to be sold, is subsequent and junior to the right, title and interest of the plaintiff herein and to the lien of said first mortgage.

19. The interest of the defendant, the Cincinnati, Hamilton & Dayton Railway Company, in or to the property hereby ordered and decreed to be sold, is subsequent and junior to the right, title and interest of the plaintiff herein and to the lien of said first mortgage.

20. The ground upon which this court took jurisdiction in this suit was that the railroads and other property subject to said first mortgage at the time when this suit was brought were and are now in the possession of this court through its receivers appointed, all as hereinabove more particularly set forth. The amount in controversy in this suit, exclusive of interest, costs and expenses, was and is in excess of the sum of \$5,000.

21. The plaintiff was without adequate remedy at law.

22. The defendants have entered their appearances herein.

It is therefore ordered, adjudged and decreed as follows:

23. There is now due and owing from the Cincinnati, Hamilton & Dayton Railway Company, and payable to the plaintiff, as trustee under the first mortgage from the Cincinnati, Dayton & Chicago Railroad Company to the said Continental Trust Company of the City of New York, for the principal of the bonds issued thereunder and interest thereon, the aggregate sum of \$1,352,586.66 with interest thereon at the rate of four per cent. per annum from the date of the entry of this decree to the date of payment.

24. The defendant, the Cincinnati, Hamilton & Dayton Railway Company or some one on its behalf, shall, within five days after the entry of this decree, pay or cause to be paid to the plaintiff, for the use and benefit of the holders of the outstanding bonds and the coupons thereunto appertaining, secured by said first mortgage, the sum of \$1,352,586.66 hereinbefore found to be the sum due from the Cincinnati, Hamilton & Dayton Railway Company to the plaintiff as trustee under the first mortgage from the Cincinnati, Dayton & Chicago Railroad Company to the Continental Trust Company of the City of New York, with interest thereon at the rate of four per cent. per annum from the date of this decree to the date of payment thereof, and the costs, disbursements and outlay incurred in this suit. In default of such payment within the time directed as aforesaid, the right, title and equity of redemption of the Cincinnati, Hamilton & Dayton Railway Company and of each and all persons, partnerships and corporations claiming under it, in and to the mortgaged property and every part and parcel thereof, including all right, title and equity of redemption of Bankers Trust Company, as trustee under such first and refunding mortgage of the Cincinnati, Hamilton & Dayton Railway Company, and all right, title and equity of redemption of Central Trust Company of New York, as trustee under said general mortgage of the Cincinnati, Hamilton & Dayton Railway Company, shall be forever barred and foreclosed and the property described in said first mortgage shall be sold free and clear of all interest, liens and claims of any and all parties hereto and of each and all such persons, partnerships and corporations as may hereafter become or be made parties hereto, and of each and all persons, partnerships and corporations claiming under them or any of them, to or upon such property or any part thereof, in the manner hereinafter provided.

25. Such sale shall be made without valuation, appraisement, redemption or extension, and shall be made by and under the direction of Aaron A. Ferris, Esq., who on account of his

special qualifications and fitness is hereby appointed special master for that purpose, and who is directed to make and conduct said sale and to execute a deed or deeds of conveyance, assignment and transfer of the mortgaged property sold, to the purchaser or purchasers thereof, or his or their assigns, upon an order of this court confirming such sale and upon payment or settlement of the purchase price or making provision therefor as hereinafter provided, or as may be permitted by any order or decree made in this cause. The sale shall be made at the place where the mortgaged lines of railway cross the line of Germantown Avenue in the City of Dayton, in the State of Ohio, upon the premises formerly owned by the Cincinnati, Dayton & Chicago Railroad Company, and upon the property to be sold, on a day or at an hour to be fixed by the special master, at the request of the solicitors for the plaintiff, and notice of the time, place and terms of said sale, describing briefly the property to be sold and referring to this decree, shall be published at least once a week for six successive weeks preceding the date of such sale, in a newspaper printed, published, regularly issued and having a general circulation in the City of Cincinnati, in the State of Ohio, and in a newspaper printed, published, regularly issued and having a general circulation in the Borough of Manhattan, City of New York, State of New York, and in a newspaper printed, published, regularly issued and having a general circulation in the City of Dayton, Ohio. The special master may at the request of the plaintiff's solicitors, adjourn or postpone said sale, and may, without further notice or advertisement, proceed with the sale on any date to which the same may have been adjourned, and he may give such further notice of sale, in addition to the notice above prescribed, or of any adjournment thereof, as plaintiff's solicitors may request. As soon as any sale or sales have been made by the special master in the performance of this decree, he shall report the same to the court and shall from time to time thereafter make such further and supplemental reports as shall be necessary to keep

the court and the parties to this cause properly advised of his proceedings in the execution of this decree.

The court reserves the right at any time to appoint another special master with the same powers as the special master hereby appointed, in case of the inability, for any reason, of the special master hereby appointed to act or perform the duties of his office.

26. The sale directed by this decree shall be made in the manner hereinafter in this article prescribed:

(a) The special master shall first offer for sale, as an entirety, all the property adjudged by this decree to be embraced in the first mortgage of the Cincinnati, Dayton & Chicago Railroad Company, and shall note the highest bid therefor.

(b) The special master shall next offer for sale, separately and as an entirety, the following property:

All that portion of the line of railway formerly belonging to the Dayton, Fort Wayne & Chicago Railway Company, situated in the counties of Allen, Van Wert, Mercer, Darke, Miami and Montgomery in the State of Ohio, and beginning at Delphos in Allen County and running in a southerly direction through Spencerville in said Allen County, Van Wert County, Mercer and Celina in Mercer County, Versailles in Darke County, Covington and West Milton in Miami County, to a point on said line designated as survey station 242+91 about 1,200 feet northwest of the point where the line of railway embraced in the first mortgage crosses the line of the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company at or near Stillwater Junction in Montgomery County, and all real estate acquired for use in connection therewith; and all rights of way, roadbeds and the entire superstructures thereof, and track at any time placed thereon, and all stations, depots, shops, yards and other grounds at any time used in connection therewith and located thereon; and all steel and iron rails, ties, railways, sidings, switches, bridges, fences, turntables, water tanks, viaducts, freight houses, car and engine houses, machine shops, and all other structures, buildings and fixtures whatsoever, acquired for use in constructing, repairing, operating, replacing and maintaining said portion of said line of railway and located thereon, also all the rights, franchises, privileges, immunities and easements, and all leases and lease-

holds, including all corporate franchises, connected with said portion of said line of railway; all the property included in this subdivision (b) being located and situated north of said point on said line of railway designated as survey station 242+91.

The special master shall note the highest bid therefor.

(c) The special master shall next offer for sale, separately and as an entirety, all the remaining property, adjudged by this decree to be embraced in the first mortgage of the Cincinnati, Dayton & Chicago Railroad Company, and shall note the highest bid therefor.

If the highest bid received for all the property embraced in said first mortgage when offered for sale as an entirety as provided in subdivision (a) of this article shall equal or exceed the aggregate of the several highest bids for said property when offered for sale in parcels, as in subdivision (b) and subdivision (c) of this article provided, then all said property shall be stricken off and sold to the highest bidder therefor as an entirety, subject to confirmation of the sale of the court. If, however, the highest bid received for said property as an entirety shall be less than the aggregate amount of the several highest bids for said property when offered in parcels, as in subdivision (b) and subdivision (c) of this article provided, then the several parcels offered for sale shall be stricken off and sold to the highest bidders for said respective parcels, subject to confirmation of the sales by the court.

The special master shall not, however, accept any bid less than:

(1) for the property embraced in said first mortgage as an entirety, the sum of \$275,000;

(2) for the property described in subdivision (b) of this article, the sum of \$175,000;

(3) for the property described in subdivision (c) of this article, the sum of \$100,000;

and if such required sum shall not be bid for either of said parcels the special master shall, unless the required sum shall be bid for all of said property as an entirety adjourn



the sale of the parcel for which the required sum shall not be bid and shall apply to the court for further instructions in respect thereof; but he shall strike off to the highest bidder or bidders therefor the parcel for which such required sum shall have been bid.

The special master shall receive no bid from anyone offering to bid who shall not first deposit with him as a condition precedent to his right to bid and as a pledge that such bidder will make good his bid in case of its acceptance by this special master and confirmation by the court.

(1) In case of the property described in subdivision (b) of this article, the sum of \$20,000 in cash, or by certified check upon any national bank or trust company in the State of Ohio or the City of New York, acceptable to the special master and made or endorsed payable to his order, or in lieu of said deposit in cash or by check, \$200,000 face amount of first mortgage bonds in bearer form, bearing the coupons appertaining to such bonds maturing October 1, 1914, and subsequently;

(2) In case of the property described in subdivision (c) of this article, the sum of \$10,000 in cash, or by certified check upon any national bank or trust company in the State of Ohio or the City of New York, acceptable to the special master, and made or endorsed payable to his order, or in lieu of said deposit in cash or by check, \$100,000 face amount of first mortgage bonds in bearer form, bearing the coupons appurtenant to such bonds maturing October 1, 1914, and subsequently;

(3) In case of the property embraced in said first mortgage, as an entirety, the sum of \$30,000 in cash, or by certified check upon any national bank or trust company in the State of Ohio or the City of New York acceptable to the special master and made or indorsed payable to his order, or in lieu of said deposit in cash or by check, \$300,000, face amount of first mortgage bonds in bearer form, bearing the coupons appurtenant to such bonds maturing October 1, 1914, and subsequently.

A deposit made by any bidder for a separate parcel may, so far as applicable, be applied on account of the deposit required to be made in order to qualify him to bid for the same property when offered as part of the mortgaged property as an entirety.

In lieu of the deposit of first mortgage bonds and coupons with the special master hereby permitted, the special master may accept the certificate of the plaintiff that it holds subject to his order the amount therein specified of first mortgage bonds in bearer form, accompanied by the coupons therein stated. The deposit received from any unsuccessful bidder shall be returned to him when the property has been struck off. The deposit received from any successful bidder shall be held by the special master subject to the orders of this court, and upon confirmation of the sale shall be applied on account of the purchase price of the property for which said bids were made. Any party to this cause, or any owner or holder of first mortgage bonds may bid or purchase at the sale.

27. In case any bidder, after the acceptance of his bid by the special master, shall fail to comply within the period of twenty days with any order of the court requiring or relating to the payment of the balance of the purchase price, then the sums deposited by such accepted bidder or bidders as hereinbefore provided, whether in cash or by check or represented by first mortgage bonds, shall be forfeited as a penalty for such failure and shall be applied to the payment of the expenses of a resale and toward making good any deficiency or loss in case the property shall be sold at a less price on any such resale and for such other purposes as the court may direct. If the court shall not confirm any sale, the deposit made by the accepted bidder shall be forthwith returned to such bidder.

28. The purchaser or purchasers, on the confirmation of the sale by the court, shall make such further payment or payments in cash on account of the purchase price as the court may from time to time direct. So much of the purchase price as may not be required by the court to be paid in cash may either be paid in cash or any purchaser may satisfy and make good such residue of his bid, in whole or in part, by turning over to the special master to be cancelled or credited, as hereinafter provided, first mortgage bonds and coupons thereunto appertaining. In lieu of so turning over to the

special master first mortgage bonds and coupons, the special master may accept the certificate of the plaintiff that it holds subject to his order the amount therein specified of first mortgage bonds in bearer form and accompanied by the coupons therein stated. A purchaser shall be credited on account of the purchase price for first mortgage bonds and the coupons thereunto appertaining turned over in part payment of the purchase price, such sum as would be paid in cash upon such first mortgage bonds and coupons out of the proceeds of sale if the whole amount of the purchase price had been paid in cash. The term "purchaser," wherever used in this decree, includes the plural in case there shall be more than one purchaser of any property sold hereunder.

All sums of money received by the special master shall forthwith be deposited by him with the Fifth-Third National Bank of Cincinnati, Ohio, subject to the order of this court.

29. The court reserves the right to resell the property sold to any purchaser upon such notice as it may direct at the risk and cost of such purchaser, in case such purchaser shall fail or omit to make any payment on account of the purchase price within twenty days after the entry of any order requiring such payment. Neither any purchaser, nor his successors or assigns, shall be required to see to the application of the purchase money. Each purchaser shall have the right to enter his appearance in this court and to become a party to this cause.

30. The purchaser of the whole or any part of the mortgaged property shall take the same subject to all taxes, assessment and other charges that are a lien upon said property, and the purchaser of the mortgaged property as an entirety, or if it shall not be sold as an entirety, the purchaser of the parcel provided for in subdivision (c) of Article 26 of this decree, as part of the consideration for said property and as part of the purchase price thereof, and in addition to the sums bid by him, and elsewhere in this decree required to be paid by him, shall take such property and receive the deeds or other

instruments of conveyance and transfer thereof upon the express condition that he or his successors or assigns shall pay, satisfy and discharge any unpaid indebtedness and liabilities of the receivers of the Cincinnati, Hamilton & Dayton Railway Company (except taxes and assessments as aforesaid) incurred in the management and operation of the property subject to the first mortgage, to the extent that they shall not have been paid out of moneys in the possession of said receivers, including moneys received by them after surrender of possession of said property but arising from the prior management and operation thereof.

The amounts to be paid under this article, unless agreed upon by the parties in interest, shall be fixed and adjudged by this court, and this court reserves the right and retains the power and jurisdiction so to do, and the right, power and jurisdiction to take back and resell any property that shall be sold under this decree in case any purchaser or his or its successors or assigns shall fail to pay any of the obligations mentioned in this article within twenty days after service of an order of this court requiring said payment, or if an appeal be taken from any such order, within twenty days after service of written notice of final confirmation of such order upon appeal.

In the event that any purchaser, after demand made, shall refuse to pay any of the above mentioned obligations which under the foregoing provisions of this article he is or may be required to pay, the person to whom the same may be due, upon twenty days' notice to such purchaser, may file a petition in this court to have the same enforced against the property sold to such purchaser, in accordance with the usual practice of this court in relation to payments of a similar character; and such purchaser shall have the right to appear and make defense to any claim, debt or demand or the priority thereof so sought to be enforced.

31. The receivers of the Cincinnati, Hamilton & Dayton Railway Company shall, not more than twenty nor less than

ten days prior to the date fixed for sale under this decree of the property herein directed to be sold, file with the clerk of this court a statement or statements showing as definitely as practicable:

(a) All indebtedness and liabilities of the receivers incurred in the management and operation of the property subject to the first mortgage and then remaining unpaid; and

(b) All outstanding contracts and leases (including all traffic, trackage, terminal, crossing, operating and other executory contracts) to which the Cincinnati, Hamilton & Dayton Railway Company or the receivers may be parties, appurtenant to said property, stating to which of the parcels provided for in subdivision (b) and subdivision (c) of Article 26 of this decree such contracts and leases are appurtenant, and, in the case of contracts or leases to which the Cincinnati, Hamilton & Dayton Railway Company is a party, stating whether such contracts or leases have been assumed or adopted or disaffirmed by the receivers.

Said statements and each of them shall be advisory only, and nothing therein contained shall be binding upon any purchaser at said sale, his successors or assigns, nor shall such statements constitute ground for release from any debt because of any representation therein or omission therefrom.

Any purchaser and his successors or assigns shall have the right for the period of six months after the delivery of the special masters' deed, as hereinafter provided, to elect whether or not to assume or to adopt as part of the property embraced in such deed, any lease or contract made by the Cincinnati, Hamilton & Dayton Railway Company appertaining to the property purchased by him, and such purchaser, his successors or assigns, shall be held not to have assumed or to have adopted any lease or contract in respect of which he or they shall not have filed a written election to assume or to adopt the same with the clerk of this court within said period of six months or within such additional period as this court may hereafter by its order or decree permit.

Any purchaser and his successors or assigns shall have the right to elect not to take or accept any part of the property struck off to him, by written notice to the special master given at any time prior to the execution and delivery of the deed or instruments of transfer from the special master herein provided for. No such election by any purchaser, his successors or assigns, shall diminish or affect the purchase price of the property. The deed or instruments of transfer to be given by the special master, the Cincinnati, Hamilton & Dayton Railway Company and the plaintiff to such purchaser, as herein provided, shall expressly except therefrom any and all property which the purchaser, his successors or assigns, shall so elect not to take or accept.

32. The funds arising from the sale of the mortgaged property shall be applied as follows:

(a) First to the payment of the costs of this cause, the proper expenses attendant upon the sale, including compensation of the special master appointed to make the sale, payment of all charges, compensation, allowances and disbursements of the plaintiff, the New York Trust Company, as trustee under the first mortgage, and its solicitors and counsel. All questions relating to the amount of compensation, allowances, costs, disbursements and expenses are hereby respectively reserved by the court for further hearing and determination, and all payments to be made under this subdivision, unless agreed upon by the parties, shall be hereafter determined, fixed, allowed and settled by the court.

(b) Thereafter to the payment of the amount found by this decree to be due for principal and interest upon the first mortgage bonds and the coupons thereunto appertaining, together with interest upon such amount from the date of this decree to the date fixed for the payment thereof, at the rate of four per cent. per annum. If the funds applicable to such payment shall not be sufficient to pay in full the amount so due on the outstanding first mortgage bonds and coupons for principal and interest, with interest thereon from the date of this decree to the date fixed for the payment thereof, at the rate of four per cent. per annum, the said funds applicable for the purpose shall be distributed among the holders of first mortgage bonds and the coupons thereunto appertaining, ratably to the aggre-

gate amount of such unpaid principal and interest and without preference or priority of principal over interest or of interest over principal.

(c) Any residue shall be dealt with as the court may direct.

33. When the special master shall be prepared to pay out the proceeds of sale he shall give notice of the time and place where he will make such payment, by publication at least once a week for three successive weeks in a newspaper published in the City of New York, N. Y., and holders of first mortgage bonds and the coupons thereunto appertaining who shall fail to present the same for payment at the time and place specified shall not be entitled to payment of any interest thereon after the date so fixed. The said special master may make such payment at any place most convenient to him, either personally or through the plaintiff, the New York Trust Company.

34. Upon confirmation of sale and the payment of the purchase price by any purchaser, his successors or assigns, or upon making such provision for the payment thereof as the court may approve, the special master making the sale shall execute to such purchaser, his successors or assigns, a deed or deeds or other proper instruments conveying, assigning and transferring the property sold to such purchaser (except such part thereof, if any, as such purchaser, his successors or assigns, shall have elected not to take in accordance with the provisions in such respect contained in Article 31 of this decree), and upon the production of such deed or deeds and assignments or transfers or a certified copy or copies thereof, the grantee or grantees therein named shall be let into the possession of the property so conveyed or transferred. The plaintiff, the New York Trust Company, shall thereupon be discharged of the trust in the premises. The purchaser, his successors and assigns, shall after such delivery of possession, hold, possess and enjoy the property conveyed and transferred and every part and parcel thereof free from the trust and lien imposed thereon by the first mortgage, and free from any claim, right, interest or equity of redemption of, in or to the same by or of the defendant, the Cincinnati, Hamilton & Dayton Railway

Company, its successors and assigns, and by or of the creditors and stockholders of said Railway Company, and by or of any party to this cause, and all persons, partnerships and corporations claiming by, under or through said Railway Company, its creditors or its stockholders, or any party to this cause; subject, nevertheless, to the condition that the court may retake and resell the property conveyed or transferred in case such purchaser, his successors or assigns, shall fail within the time limited to pay any balance of the purchase price remaining unpaid.

35. At the time of the execution of any deed or deeds by the special master, the defendant, the Cincinnati, Hamilton & Dayton Railway Company, shall, as a further assurance to the purchaser, his successors and assigns, execute and deliver a similar deed or deeds or other conveyance, or if the purchaser, his successors or assigns, shall so request, join with the special master in the execution of the deed or deeds to be made by him, and shall thereby convey, transfer, assign and release to the purchaser, his successors and assigns, all its rights, title and interest of, in and to the property conveyed, assigned and transferred to the said purchaser, his successors or assigns, by said special master, the plaintiff, the New York Trust Company, as trustee under said first mortgage, shall release unto said purchaser, his successors and assigns, by proper instrument, all its right, title and interest as trustee under the first mortgage of, in and to the property so conveyed, Bankers Trust Company, as trustee, shall release unto said purchaser, his successors or assigns, by proper instrument, all its right title and interest, as trustee under said first and refunding mortgage, of, in and to the property so conveyed, and Central Trust Company of New York, as trustee, shall release unto said purchaser, his successors or assigns, by proper instrument, all its right, title and interest, as trustee under said general mortgage, of, in and to the property so conveyed.

36. All questions not hereby disposed of are reserved for future adjudication. Any party to this cause may at any time apply to this court for further relief at the foot of this decree.



37. The first mortgage is a lien on the following properties:

All that portion of the line of railway formerly belonging to the Dayton, Fort Wayne & Chicago Railway Company, situated in the Counties of Allen, Van Wert, Mercer, Darke, Miami and Montgomery, in the State of Ohio, and beginning at Delphos in Allen County and running in a southerly direction through Spencerville in said Allen County, Van Wert County, Mercer and Celina in Mercer County, Versailles in Darke County, Covington and West Milton in Miami County, Stillwater Junction and Dayton in Montgomery County, to the said City of Dayton, in said last-named county, together with a branch line of about one mile from the National Home for Disabled Volunteer Soldiers to the main line about one and one-half miles from the western corporation limits of said City of Dayton, together with all the property of a corporate nature, or ownership of every kind formerly belonging to the Cincinnati, Dayton & Chicago Railroad Company and owned and used by it in constructing, managing or operating its road, including all property, real and personal, together with all the rolling stock, equipments and locomotives at any time owned or acquired by it or its constituent companies or predecessors for constructing, repairing, operating, replacing or maintaining its railroad conveyed by its first mortgage, dated April 1, 1892, to Continental Trust Company of the City of New York, as trustee, and all real estate acquired for use in connection therewith; also all rights of way, roadbeds and the entire superstructures thereof, and track at any time placed thereon, and all stations, depots, shops, yards and other grounds at any time used in connection therewith; and all steel and iron rails, ties, railways, sidings, switches, bridges, fences, turntables, water tanks, viaducts, freight houses, car and engine houses, machine shops, and all other structures, buildings and fixtures whatsoever; and all tools, implements, machinery, fuel, furniture, fixtures, materials and supplies, owned or acquired by it in constructing, repairing, operating, replacing and maintaining its said railroad; also all the rights, franchises, privileges, immunities and easements, and all leases, leaseholds, including all corporate franchises connected with said line of railroad and property and all other property of whatever nature, real or personal, at any time acquired or owned by said the Cincinnati, Dayton & Chicago Railroad Company.

Together with the reversions, remainders, tolls, incomes, rents, issues and profits of the above described property and premises, and also all the estate, right, title, interest and claim, as well in law as in equity, formerly of said the Cincinnati, Day-

ton & Chicago Railroad Company, of, in and to the said premises, and every part thereof, with all the appurtenances.

The real estate acquired for use in connection with that part of said property included in subdivision (b) of Article 26 of this decree includes the real estate described in the following deeds:

(1) Deed dated October 24, 1912, from Samuel Berger and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 342, at page 360.

(2) Deed dated July 2, 1912, from Model Milling Company to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Mercer County, Ohio, in Book 83, at page 596.

(3) Deed dated September 30, 1905, from Fred Freeders and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 269, at page 276.

(4) Deed dated July 16, 1896, from O. Montgomery et al. to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 210, at page 137.

(5) Deed dated March 26, 1900, from A. Coffman to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 229, at page 279.

(6) Deed dated November 22, 1892, from S. B. Smith and wife to the Cincinnati, Dayton & Chicago Railroad Company.

(7) Deed dated September 7, 1895, from J. Henley and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Miami County, Ohio, in Book 101, at page 451.

(8) Deed dated May 28, 1904, from heirs of John G. Schaefer to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Miami County, Ohio, in Book 124, at page 257.

(9) Deed dated April 29, 1904, from I. C. Finfrack and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Miami County, Ohio, in Book 123, at page 489.

(10) Deed dated May 3, 1894, from B. F. Southworth and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, Ohio, in Book 71, at page 143.

(11) Deed dated January 8, 1895, from F. L. Wagoner and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, Ohio, in Book 72, at page 248.

(12) Deed dated May 11, 1895, from J. A. Patterson and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, Ohio, in Book 71, at page 578.

(13) Deed dated August 13, 1896, from A. Palmer et al. to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Mercer County, Ohio, in Book 71, at page 58.

(14) Deed dated July 14, 1893, from J. Stauffer to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 43, at page 423.

(15) Deed dated July 6, 1895, from heirs of George L. Snyder to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 47, at page 135.

(16) Deed dated November 20, 1899, from S. Barnett to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 57, at page 63.

(17) Deed dated November 30, 1908, from J. Helstern and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 304, at page 332.

The real estate acquired for use in connection with that part of said property included in subdivision (c) of Article 26 of this decree includes the real estate described in the deed dated February 17, 1899, from O. Soehner and J. Dister to the Cincinnati, Hamilton & Dayton Railroad Company and recorded in the office of the recorder of Montgomery County, Ohio, in Book 223, at page 51.

Hollister, United States District Judge.

Dated April 20, 1917.

**Form No. 109****Advertisement of Sale by Special Master**

**THE CINCINNATI, HAMILTON & DAYTON RAILWAY COMPANY**  
(Cincinnati, Dayton & Chicago)

*Notice of Sale*

Notice is hereby given that, pursuant to a final decree made and entered in the District Court of the United States for the Southern District of Ohio, Western Division, on April 20, 1917, in a certain cause in equity pending in said court, entitled "The New York Trust Company, Plaintiff, against The Cincinnati, Hamilton & Dayton Railway Company, Bankers Trust Company and Central Trust Company of New York, Defendants. In Equity. No. 115," I, Aaron A. Ferris, the special master referred to in said final decree, will sell, at public auction to the highest bidder or bidders, at the place where the mortgaged lines of railway cross the line of Germantown Avenue, in the City of Dayton, in the State of Ohio, upon the premises formerly owned by the Cincinnati, Dayton & Chicago Railroad Company, and upon the property to be sold, on June 7, 1917, at two o'clock, p. m., the property in said final decree described and therein directed to be sold, to wit, the property embraced in the first mortgage of the Cincinnati, Dayton & Chicago Railroad Company.

A brief description of the property to be sold at said sale is as follows:

All that portion of the line of railway formerly belonging to the Dayton, Fort Wayne & Chicago Railway Company, situated in the Counties of Allen, Van Wert, Mercer, Darke, Miami and Montgomery, in the State of Ohio, and beginning at Delphos in Allen County and running in a southerly direction through Spencerville in said Allen County, Van Wert County, Mercer and Celina in Mercer County, Versailles in Darke County, Covington and West Milton in Miami County, Stillwater Junction and Dayton in Montgomery County, to the said City of Dayton, in said last-named county, together with a branch line of about one mile from the National Home for

Disabled Volunteer Soldiers to the main line about one and one-half miles from the western corporation limits of said City of Dayton, together with all the property of a corporate nature, or ownership of every kind formerly belonging to the Cincinnati, Dayton & Chicago Railroad Company and owned and used by it in constructing, managing or operating its road, including all property, real and personal, together with all the rolling stock, equipments and locomotives at any time owned or acquired by it or its constituent companies or predecessors for constructing, repairing, operating, replacing or maintaining its railroad conveyed by its first mortgage, dated April 1, 1892, to Continental Trust Company of the City of New York, as trustee, and all real estate acquired for use in connection therewith; also all rights of way, roadbeds and the entire superstructures thereof, and track at any time placed thereon, and all stations, depots, shops, yards and other grounds at any time used in connection therewith; and all steel and iron rails, ties, railways, sidings, switches, bridges, fences, turntables, water tanks, viaducts, freight houses, car and engine houses, machine shops, and all other structures, buildings and fixtures whatsoever; and all tools, implements, machinery, fuel, furniture, fixtures, materials and supplies, owned or acquired by it in constructing, repairing, operating, replacing and maintaining its said railroad; also all the rights, franchises, privileges, immunities and easements, and all leases, leaseholds, including all corporate franchises connected with said line of railroad and property and all other property of whatever nature, real or personal, at any time acquired or owned by said the Cincinnati, Dayton & Chicago Railroad Company.

Together with the reversions, remainders, tolls, incomes, rents, issues and profits of the above described property and premises, and also all the estate, right, title, interest and claim, as well in law as in equity, formerly of said the Cincinnati, Dayton & Chicago Railroad Company, of, in and to the said premises, and every part thereof, with the appurtenances.

As more fully provided by said final decree, to which reference is hereby made:

1. Said sale will be made without valuation, appraisalment, redemption or extension.
2. The special master may adjourn or postpone such sale and may, without further notice of advertisement, proceed with the sale on any date to which the same may have been adjourned.

3. Any party to the cause, or any owner or holder of first mortgage bonds of the Cincinnati, Dayton & Chicago Railroad Company (hereinafter called first mortgage bonds) may bid or purchase at the sale.

4. Said property, whether sold as an entirety or in parcels, will be sold free and clear of all interest, liens and claims of any and all parties to the cause, and to each and all such persons, partnerships and corporations as may hereafter become or be made parties hereto, and of each and all persons, partnerships and corporations claiming under them or any of them.

5. Said sale will be made in the following manner:

(a) The special master will first offer for sale, as an entirety, all the property adjudged by said final decree to be embraced in the first mortgage of the Cincinnati, Dayton & Chicago Railroad Company, and will note the highest bid therefor.

(b) The special master will next offer for sale, separately and as an entirety, the following property:

All that portion of the line of railway formerly belonging to the Dayton, Fort Wayne & Chicago Railway Company, situated in the Counties of Allen, Van Wert, Mercer, Darke, Miami and Montgomery in the State of Ohio, and beginning at Delphos in Allen County and running in a southerly direction through Spencerville in said Allen County, Van Wert County, Mercer and Celina in Mercer County, Versailles in Darke County, Covington and West Milton in Miami County, to a point on said line designated as Survey Station 242+91 about 1,200 feet northwest of the point where the line of railway embraced in the first mortgage crosses the line of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company at or near Stillwater Junction in Montgomery County, and all real estate acquired for use in connection therewith; and all rights of way, roadbeds and the entire superstructures thereof and track at any time placed thereon, and all stations, depots, shops, yards and other grounds at any time used in connection therewith and located thereon; and all steel and iron rails, ties, railways, sidings, switches, bridges, fences, turntables,

water tanks, viaducts, freight houses, car and engine houses, machine shops, and all other structures, buildings and fixtures whatsoever, acquired for use in constructing, repairing, operating, replacing and maintaining said portion of said line of railway and located thereon; also all the rights, franchises, privileges, immunities and easements, and all leases and leaseholds, including all corporate franchises, connected with said portion of said line of railway; all the property included in this subdivision (b) being located and situated north of said point on said line of railway designated as Survey Station 242+91.

The real estate acquired for use in connection with the line of railway included in this subdivision (b) includes the real estate described in the following deeds:

(1) Deed dated October 24, 1912, from Samuel Berger and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 342, at page 360.

(2) Deed dated July 2, 1912, from Model Milling Company to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Mercer County, Ohio, in Book 83, at page 596.

(3) Deed dated September 30, 1905, from Fred Freeders and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 269, at page 276.

(4) Deed dated July 16, 1896, from O. Montgomery et al. to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 210, at page 137.

(5) Deed dated March 26, 1900, from A. Coffman to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 229, at page 279.

(6) Deed dated November 22, 1892, from S. B. Smith and wife to the Cincinnati, Dayton & Chicago Railroad Company.

(7) Deed dated September 7, 1895, from J. Henley and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Miami County, Ohio, in Book 101, at page 451.

(8) Deed dated May 28, 1904, from heirs of John G. Schaefer to the Cincinnati, Hamilton & Dayton Railway Com-

pany, recorded in the office of the recorder of Miami County, Ohio, in Book 124, at page 257.

(9) Deed dated April 29, 1904, from I. C. Finfrack and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Miami County, Ohio, in Book 123, at page 489.

(10) Deed dated May 3, 1894, from B. F. Southworth and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, Ohio, in Book 71, at page 143.

(11) Deed dated January 8, 1895, from F. L. Wagoner and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, Ohio, in Book 72, at page 248.

(12) Deed dated May 11, 1895, from J. A. Patterson and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, Ohio, in Book 71, at page 578.

(13) Deed dated August 13, 1896, from A. Palmer et al. to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Mercer County, Ohio, in Book 71, at page 58.

(14) Deed dated July 14, 1893, from J. Stauffer to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 43, at page 423.

(15) Deed dated July 6, 1895, from heirs of George L. Snyder to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 47, at page 135.

(16) Deed dated November 20, 1899, from S. Barnett to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 57, at page 63.

(17) Deed dated November 30, 1908, from J. Helstern and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 304, at page 332.

The special master will note the highest bid therefor.

(c) The special master will next offer for sale, separately and as an entirety, all the remaining property adjudged by said final decree to be embraced in the first mortgage of the Cincinnati, Dayton & Chicago Railroad Company.



The special master will note the highest bid therefor. The real estate acquired for use in connection with the lines of railway included in this subdivision (c) includes the real estate described in the deed dated February 17, 1899, from O. Soehner and J. Dister to the Cincinnati, Hamilton & Dayton Railroad Company and recorded in the office of the recorder of Montgomery County, Ohio, in Book 223, at page 51.

If the highest bid received for all the property embraced in said first mortgage when offered for sale as an entirety as provided in subdivision (a) of this paragraph shall equal or exceed the aggregate of the several highest bids for said property when offered for sale in parcels, as in subdivision (b) and subdivision (c) of this paragraph provided, then all said property will be stricken off and sold to the highest bidder therefor as an entirety, subject to confirmation of the sale by the court. If, however, the highest bid received for said property as an entirety shall be less than the aggregate amount of the several highest bids for said property when offered in parcels, as in subdivision (b) and subdivision (c) of this paragraph provided, then the several parcels offered for sale will be stricken off and sold to the highest bidders for said respective parcels, subject to confirmation of the sales by the court.

The special master will not, however, accept any bid less than:

(1) for the property embraced in said first mortgage as an entirety, the sum of \$275,000;

(2) for the property described in subdivision (b) of this paragraph, the sum of \$175,000;

(3) for the property described in subdivision (c) of this paragraph, the sum of \$100,000;

and if such required sum shall not be bid for either of said parcels, the special master will, unless the required sum shall be bid for all of said property as an entirety, adjourn the sale of the parcel for which the required sum shall not be bid and will apply to the court for further instructions in respect thereof; but he will strike off to the highest bidder or bidders

therefor the parcel for which such required sum shall have been bid.

The special master will receive no bid from any one offering to bid who shall not first deposit with him as a condition precedent to his right to bid and as a pledge that such bidder will make good his bid in case of its acceptance by the special master and confirmation by the court:

(1) In case of the property described in subdivision (b) of this paragraph the sum of \$20,000 in cash or by certified check upon any national bank or trust company in the State of Ohio or the City of New York acceptable to the special master and made or indorsed payable to his order, and in lieu of said deposit in cash or by check, \$200,000, face amount of first mortgage bonds in bearer form, bearing the coupons appertaining to such bonds maturing October 1, 1914, and subsequently;

(2) In case of the property described in subdivision (c) of this paragraph, the sum of \$10,000 in cash, or by certified check upon any national bank or trust company in the State of Ohio or the City of New York acceptable to the special master, and made or indorsed payable to his order, or in lieu of said deposit in cash or by check, \$100,000, face amount of first mortgage bonds in bearer form, bearing the coupons appurtenant to such bonds maturing October 1, 1914, and subsequently;

(3) In case of the property embraced in said first mortgage, as an entirety, the sum of \$30,000 in cash, or by certified check upon any national bank or trust company in the State of Ohio or the City of New York acceptable to the special master, and made or indorsed payable to his order, or in lieu of said deposit in cash or by check, \$300,000, face amount of first mortgage bonds in bearer form, bearing the coupons appurtenant to such bonds maturing October 1, 1914, and subsequently.

A deposit made by any bidder for a separate parcel, may, so far as applicable, be applied on account of the deposit required to be made in order to qualify him to bid for the same

property when offered as part of the mortgaged property as an entirety.

In lieu of the deposit of first mortgage bonds and coupons with the special master hereby permitted, the special master will accept the certificate of the New York Trust Company that it holds subject to his order the amount therein specified of first mortgage bonds in bearer form, accompanied by the coupons therein stated. The deposit received from any unsuccessful bidder will be returned to him when the property has been struck off. The deposit received from any successful bidder will be held by the special master subject to the orders of said court, and upon confirmation of the sale will be applied on account of the purchase price of the property for which said bids were made.

6. In case any bidder, after the acceptance of his bid by the special master, shall fail to comply within the period of twenty days with any order of the court requiring or relating to the payment of the balance of the purchase price, then the sums deposited by such accepted bidder or bidders as hereinbefore provided, whether in cash or by check or represented by first mortgage bonds, will be forfeited as a penalty for such failure and will be applied to the payment of the expenses of a resale and toward making good any deficiency or loss in case the property shall be sold at a less price on any such resale and for such other purposes as the court may direct. If the court shall not confirm any sale, the deposit made by the accepted bidder will be forthwith returned to such bidder.

7. The purchaser or purchasers, on the confirmation of the sale by the court, shall make such further payment or payments in cash on account of the purchase price as the court may from time to time direct. So much of the purchase price as may not be required by the court to be paid in cash may either be paid in cash or any purchaser may satisfy and make good such residue of his bid in whole or in part by turning over to the special master to be cancelled or credited, as hereinafter provided, first mortgage bonds and coupons thereunto

appertaining. In lieu of so turning over to the special master first mortgage bonds and coupons, the special master will accept the certificate of the New York Trust Company that it holds subject to his order the amount therein specified of first mortgage bonds in bearer form and accompanied by the coupons therein stated. A purchaser will be credited on account of the purchase price for first mortgage bonds and the coupons thereunto appertaining turned over in part payment of the purchase price such sum as would be paid in cash upon such first mortgage bonds and coupons out of the proceeds of sale if the whole amount of the purchase price had been paid in cash. The term "purchaser," wherever used in this notice or in said final decree, includes the plural in case there shall be more than one purchaser of any property sold hereunder.

8. The court reserves the right to resell the property sold to any purchaser upon such notice as it may direct at the risk and cost of such purchaser, in case such purchaser shall fail or omit to make any payment on account of the purchase price within twenty days after the entry of any order requiring such payment. Neither any purchaser, nor his successors or assigns, shall be required to see to the application of the purchase money. Each purchaser shall have the right to enter his appearance in said court and to become a party to the cause.

9. As provided in Article 30 of said final decree purchaser of the whole or any part of the mortgaged property shall take the same subject to all taxes, assessments and other charges that are a lien on said property, and the purchaser of the mortgaged property as an entirety, or if it shall not be sold as an entirety, the purchaser of the parcel provided for in subdivision (c) of Article 26 of said final decree (being the parcel described in subdivision (c) of paragraph 5 hereof) as part of the consideration for said property and as part of the purchase price thereof, and in addition to the sums bid by him, and elsewhere in said final decree required to be paid by him, shall take such property and receive the

deeds or other instruments of conveyance and transfer thereof upon the express condition that he or his successors or assigns shall pay, satisfy and discharge any unpaid indebtedness and liabilities of the receivers of the Cincinnati, Hamilton & Dayton Railway Company (except taxes and assessments as aforesaid) incurred in the management and operation of the property subject to the first mortgage, to the extent that they shall not have been paid out of moneys in the possession of said receivers, including moneys received by them after surrender of possession of said property, but arising from the prior management and operation thereof.

The amounts to be paid, under said Article 30, unless agreed upon by the parties in interest, shall be fixed and adjudged by said court, and said court reserves the right and retains the power and jurisdiction so to do, and the right, power and jurisdiction to take back and resell any property that shall be sold under said final decree in case any purchaser or his or its successors or assigns shall fail to pay any of the obligations mentioned in said Article 30 within twenty days after service of an order of said court requiring said payment, or if an appeal be taken from any such order, within twenty days after service of written notice of final confirmation of such order upon appeal.

In the event that any purchaser, after demand made, shall refuse to pay any of the above-mentioned obligations which under the foregoing provisions of said Article 30 he is or may be required to pay, the person to whom the same may be due, upon twenty days' notice to such purchaser, may file a petition in said court to have the same enforced against the property sold to such purchaser, in accordance with the usual practice of said court in relation to payments of a similar character; and such purchaser shall have the right to appear and make defense to any claim, debt or demand or the priority thereof so sought to be enforced.

10. Article 31 of said final decree provides that the receivers of the Cincinnati, Hamilton & Dayton Railway Com-

pany shall, not more than twenty nor less than ten days prior to the date fixed for the sale under said final decree, file with the clerk of said court an advisory statement or statements with reference to indebtedness, liabilities, contracts and leases.

Any purchaser and his successors or assigns shall have the right for the period of six months after the delivery of the special master's deed, to elect whether or not to assume or to adopt as part of the property embraced in such deed, any lease or contract made by the Cincinnati, Hamilton & Dayton Railway Company appertaining to the property purchased by him, and such purchaser, his successors or assigns, shall be held not to have assumed or to have adopted any lease or contract in respect of which he or they shall not have filed a written election to assume or to adopt the same with the clerk of said court within said period of six months or within such additional period as said court may thereafter by its order or decree permit.

Any purchaser and his successors or assigns shall have the right to elect not to take or accept any part of the property struck off to him, by written notice to the special master given at any time prior to the execution and delivery of the deed or instruments of transfer from the special master. No such election by any purchaser, his successors or assigns, shall diminish or affect the purchase price of the property.

11. Upon confirmation of sale and the payment of the purchase price by any purchaser, his successors or assigns, or upon making such provision for the payment thereof as said court may approve, the special master making the sale shall execute to such purchaser, his successors or assigns, a deed or deeds or other proper instruments conveying, assigning and transferring the property sold to such purchaser (except such part thereof, if any, as such purchaser, his successors or assigns, shall have elected not to take in accordance with the provisions in such respect contained in Article 31 of said final decree), and upon the production of such deed or deeds and assignments or transfers or a certified copy or copies

thereof, the grantee or grantees therein named shall be let into the possession of the property so conveyed or transferred. The purchaser, his successors and assigns, shall after such delivery of possession hold, possess and enjoy the property conveyed and transferred and every part and parcel thereof free from the trust and lien imposed thereon by the first mortgage, and free from any claim, right, interest or equity of redemption of, in or to the same by or of the Cincinnati, Hamilton & Dayton Railway Company, its successors and assigns, and by or of the creditors and stockholders of said Railway Company, and by or of any party to this cause, and all persons, partnerships and corporations claiming by, under or through said Railway Company, its creditors or its stockholders, or any party to this cause; subject, nevertheless, to the condition that the court may retake and resell the property conveyed or transferred in case such purchaser, his successors or assigns, shall fail within the time limited to pay any balance of the purchase price remaining unpaid.

12. By said final decree all questions not disposed of by said final decree are reserved for future adjudication.

For further particulars, reference is hereby made to said final decree and to the record of testimony in the above mentioned cause on file in the office of the clerk of the District Court of the United States for the Western Division of the Southern District of Ohio.

Aaron A. Ferris, Special Master, 709 Mercantile Library Building, Cincinnati, Ohio.

Squire, Sanders & Dempsey, Leader-News Building, Cleveland, Ohio.

Alfred A. Cook, 111 Broadway, New York City, Solicitors for Plaintiff, The New York Trust Company.

Dated April 26, 1917.

**Form No. 110****Special Master's Report of Sale**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.

IN EQUITY. No. 115

The New York Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company, Bankers  
Trust Company and Central Trust Company of  
New York, Defendants.

*Special Master's Report of Sale*

I, Aaron A. Ferris, the special master appointed by and referred to in the final decree entered herein on April 20, 1917, and referred to in the orders entered herein July 17, 1917, and August 8, 1917, do hereby respectfully report:

1. Neither the defendant, the Cincinnati, Hamilton & Dayton Railway Company (hereinafter called the Railway Company) nor anyone in its behalf, within five days after the entry of such final decree, or at any other time, paid or caused to be paid to the New York Trust Company for the use and benefit of the holders of the outstanding first mortgage bonds of the Cincinnati, Dayton & Chicago Railroad Company and of the coupons thereunto appertaining, secured by the first mortgage, dated April 1, 1892, from the Cincinnati, Dayton & Chicago Railroad Company to Continental Trust Company as the City of New York, the sum of \$1,352,586.66 found by said final decree to be the sum due from the Cincinnati, Hamilton & Dayton Railway Company to the New York Trust Company, as trustee under the said first mortgage, with interest thereon at the rate of four per cent. per annum from the date of said final decree, or any other sum.

2. At the request of the solicitors for the plaintiff herein and pursuant to the directions of said orders entered July 17, 1917, and August 8, 1917, I fixed September 25, 1917, as the day and two o'clock p. m., as the hour, for the sale



directed by said final decree, as modified by said orders, to be made, and caused notice of the time, place and terms of sale, describing briefly the property to be sold and referring to said final decree, to be published once a week for four consecutive weeks preceding the date so fixed for said sale, to wit, on August 27, September 1, 3, 4, 10, 17 and 24, 1917, in a newspaper printed, published, regularly issued and having a general circulation in the Borough of Manhattan, City of New York, State of New York, to wit, the New York Tribune, and in a newspaper, printed, published, regularly issued and having a general circulation in the City of Dayton, State of Ohio, to wit, The Dayton Journal. A copy of said notice so caused to be published by me is hereto attached, marked Exhibit A, and is made a part hereof. Affidavits showing the publication of said notice in said New York Tribune and said The Dayton Journal are filed herewith and are hereby made a part hereof.

3. On September 25, 1917, at two o'clock p. m., at the place where the mortgaged lines of railway of the Railway Company cross the line of Germantown Avenue in the City of Dayton, in the State of Ohio, upon the premises formerly owned by the Cincinnati, Dayton & Chicago Railroad Company, and upon the property to be sold, being the time and place named in said notice of sale, I personally attended and at the request of Mr. Alfred A. Cook and Messrs. Squire, Sanders and Dempsey, solicitors for the plaintiff, I adjourned and postponed said sale to October 17, 1917, at two o'clock p. m., in the afternoon at the same place, namely, the place where the mortgaged lines of railway of the Railway Company cross the line of Germantown Avenue in the City of Dayton, in the State of Ohio, and I caused notice of said adjournment and of the time, place and terms of said adjourned sale, describing briefly the property to be sold, and referring to said final decree, to be published once in each week in two consecutive weeks preceding the date so fixed for said adjourned sale, to wit, on October 3, 1917, and October 12, 1917, in a news-

paper printed, published, regularly issued and having a general circulation in the Borough of Manhattan, City of New York, State of New York, to wit, the New York Tribune, and in a newspaper printed, published, regularly issued and having a general circulation in the City of Dayton, State of Ohio, to wit, The Dayton Journal. A copy of said notice of said adjourned sale caused to be published by me is hereto attached, marked Exhibit B and is made a part hereof. Affidavits showing the publication of said notice in said the New York Tribune and said The Dayton Journal are filed herewith and are hereby made a part hereof.

4. On October 17, 1917, at two o'clock p. m., at the place where the mortgaged lines of railway of the Railway Company cross the line of Germantown Avenue in the City of Dayton in the State of Ohio, upon the premises formerly owned by the Cincinnati, Dayton & Chicago Railroad Company, and upon the property to be sold, being the time and place named in said notice of adjourned sale, I personally attended and offered for sale at public auction in the manner prescribed in said final decree as modified by said orders entered July 17, 1917, and August 8, 1917, and subject to the provisions in said final decree and said orders set forth, the property by said final decree and said orders directed to be sold. The highest bid for said property was made by Herbert Shaffer and was for the sum of two hundred and seventy-five thousand dollars (\$275,000) and I struck off and sold said property as an entirety to said Herbert Shaffer the highest bidder therefor subject to confirmation of sale by this court.

5. Prior to any offering by me for sale under said final decree, said Herbert Shaffer deposited with, and delivered to me, in performance of the condition precedent to his right to bid for said property, and as a pledge that he would make good his bid for said property in case of its acceptance by me and confirmation by this court, the certificate of the New York Trust Company, the plaintiff herein, and it holds, subject to my order, \$300,000, face amount, of said first mortgage bonds,

in bearer form, bearing coupons appurtenant to such bonds maturing October 1, 1914, and subsequently.

Respectfully submitted,

Aaron A. Ferris, Special Master.

Exhibit "A"—Newspaper Clipping.

Exhibit "B"—Newspaper Clipping.

Dated at Cincinnati, Ohio, October 17, 1917.

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### Form No. 111

#### Petition for Confirmation of Sale by Special Master

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN  
DIVISION. IN EQUITY. No. 115

The New York Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company, Bankers  
Trust Company and Central Trust Company of  
New York, Defendants.

#### *Petition for Confirmation of Sale*

Now comes the New York Trust Company, plaintiff, and respectfully shows as follows:

1. The special master appointed by and referred to in the final decree entered herein April 20, 1917, and referred to in the orders entered herein July 17, 1917, and August 8, 1917, after having given due notice of the sale and of the adjournment thereof to be made under said final decree as amended by said orders entered herein July 17, 1917, and August 8, 1917, did on October 17, 1917, at two o'clock p. m., at the place where the mortgaged lines of railway of the defendant Railway Company cross the line of Germantown Avenue in the City of Dayton, in the State of Ohio, upon the premises formerly owned by the Cincinnati, Dayton & Chicago Railroad Company, and upon the property to be sold, being the time and place named in said notice of sale and in said notice

of said adjournment, sell at public auction, subject to confirmation by this court, the property of the defendant Railway Company as described in said final decree in the manner therein prescribed as modified by said orders entered July 17, 1917, and August 8, 1917, to Herbert Shaffer as an entirety for the sum of \$275,000, the bid of said purchaser being the highest bid for said property.

2. Subsequently and on October 18, 1917, said special master filed herein his report of sale to which the petitioner refers.

Wherefore the petitioner prays that said special master's report of sale be in all things confirmed, and that said sale therein reported be made final and absolute, and for such other and further relief as to the court may seem proper.

The New York Trust Company,

By A. A. Cook and Squire, Sanders & Dempsey, Attorneys.

Squire, Sanders & Dempsey, Alfred A. Cook, Solicitors.

Dated, October 18, 1917.

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## Form No. 112

### Notice of Motion for Confirmation of Sale

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN  
DIVISION. IN EQUITY. No. 115

The New York Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company, Bankers  
Trust Company and Central Trust Company of  
New York, Defendants.

### *Notice of Motion*

Please take notice that on the petition of New York Trust Company, dated October 18, 1917, hereto annexed, on the special master's report of sale filed herein October 18, 1917, and on all other proceedings in the above entitled cause, a motion will be made in the above entitled cause at a term

of the District Court of the United States within and for the Southern District of Ohio, Western Division, to be held in the United States postoffice building in the City of Cincinnati, Ohio, on October 22, 1917, at 2.15 o'clock p. m., or so soon thereafter as counsel can be heard, for an order confirming said report of sale, and making final and absolute the sale therein reported, and for such other and further relief as to said court may seem proper.

A. A. Cook, Squire, Sanders & Dempsey, Solicitors  
for Plaintiff.

To Messrs. White & Case, 14 Wall Street, Borough of Manhattan, City and State of New York, and Messrs. Maxwell & Ramsey, Union Central Building, Cincinnati, Ohio, Solicitors for Defendant, Bankers Trust Company.

To Messrs. Joline, Larkin & Rathbone, 54 Wall Street, Borough of Manhattan, City and State of New York, and Ben B. Nelson, Esq., 4 National Bank Building, Cincinnati, Ohio, Solicitors for Defendant, Central Trust Company of New York.

To Morison R. Waite, Esq., 97 Carew Building, Cincinnati, Ohio, Solicitor for Defendant, the Cincinnati, Hamilton & Dayton Railway Company and for Receivers, Judson Harmon and Rufus B. Smith.

———, Solicitors for ———.

Due and timely notice of the foregoing notice of motion and of the petition therein mentioned is hereby admitted.

White & Case, Maxwell & Ramsey, Solicitors for  
Defendant, Bankers Trust Company.

Joline, Larkin & Rathbone, Ben B. Nelson, Solicitors  
for Defendant, Central Trust Company of New  
York.

Morison R. Waite, Solicitor for Defendant, the Cincinnati, Hamilton & Dayton Railway Company,  
and for Receivers, Judson Harmon and Rufus  
B. Smith.

Herbert Shaffer.

Dated October 18, 1917.

**Form No. 113****Order Confirming Sale by Special Master**

IN THE DISTRICT COURT OF THE UNITED STATES WITHIN AND  
FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN  
DIVISION. IN EQUITY. No. 115

The New York Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company, Bankers  
Trust Company and Central Trust Company of  
New York, Defendants.

*Order Confirming Sale*

This cause came on further to be heard on the petition of the New York Trust Company, dated October 18, 1917, and on the petition of Herbert Shaffer, dated October 18, 1917, on the special master's report of sale filed herein October 18, 1917, and on all other proceedings in the above entitled cause, and was argued by counsel, and thereupon, upon consideration thereof, the court, being fully advised in the premises, and the holders of all the bonds issued under the first mortgage foreclosed herein and outstanding having consented in open court by counsel to the entry of this order, finds, adjudges and decrees as follows:

1. The special master appointed by and referred to in the final decree made and entered herein on April 20, 1917, and referred to in the orders entered herein July 17, 1917, and August 8, 1917, has fully complied with all the directions contained in said final decree as amended in said orders as to the sale of the property therein described of the defendant, the Cincinnati, Hamilton & Dayton Railway Company (hereinafter called the Railway Company).

2. The sale of said property held on October 17, 1917, was held in all respects as provided by said final decree, as amended by said orders of July 17, 1917, and August 8, 1917, and at said sale the special master sold at public auction to Herbert Shaffer the property described in said final decree, as

an entirety, for the sum of \$275,000, the bid of said Herbert Shaffer being the highest bid for said property.

It is therefore ordered, adjudged and decreed, as follows:

1. The special master's report of sale filed herein October 18, 1917, is in all things confirmed; and the sale therein reported is hereby made final and absolute, subject, however, to all the terms and conditions of said final decree, amended by said orders of July 17, 1917, and August 8, 1917, and of this order, and to all the reservations to the purchasers and to their assigns and to this court in said final decree, so amended, and in this order contained, such sale being the sale to Herbert Shaffer of the property described in said final decree, being all the property adjudged by said final decree to be embraced in the first mortgage of the Cincinnati, Dayton & Chicago Railroad Company to Continental Trust Company of the City of New York, dated April 1, 1892, as an entirety, for the sum of \$275,000, said property being more particularly described as follows:

All that portion of the line of railway formerly belonging to the Dayton, Fort Wayne & Chicago Railway Company, situated in the counties of Allen, Van Wert, Mercer, Darke, Miami and Montgomery, in the State of Ohio, and beginning at Delphos in Allen County and running in a southerly direction through Spencerville in said Allen County, Van Wert County, Mercer and Celina in Mercer County, Versailles in Darke County, Covington and West Milton in Miami County, Stillwater Junction and Dayton in Montgomery County, to the said City of Dayton, in said last named county, together with a branch line of about one mile from the National Home for Disabled Volunteer Soldiers to the main line about one and one-half miles from the western corporation limits of said City of Dayton, together with all the property of a corporate nature, or ownership of every kind formerly belonging to the Cincinnati, Dayton & Chicago Railroad Company and owned and used by it in constructing, managing or operating its road, including all property, real and personal, together with

all the rolling stock, equipments and locomotives at any time owned or required by it or its constituent companies or predecessors for constructing, repairing, operating, replacing or maintaining its railroad conveyed by the first mortgage, and all real estate acquired for use in connection therewith; also all rights of way, roadbeds and the entire superstructures thereof, and track at any time placed thereon, and all stations, depots, shops, yards and other grounds at any time used in connection therewith; and all steel and iron rails, ties, railways, sidings, switches, bridges, fences, turntables, water tanks, viaducts, freight houses, car and engine houses, machine shops, and all other structures, buildings and fixtures whatsoever; and all tools, implements, machinery, fuel, furniture, fixtures, materials, and supplies, owned or acquired by it in constructing, repairing, operating, replacing and maintaining its said railroad; also all the rights, franchises, privileges, immunities and easements, and all leases, leaseholds, including all corporate franchises connected with said line of railroad and property and all other property of whatever nature, real or personal, at any time acquired or owned by said the Cincinnati, Dayton & Chicago Railroad Company, including the real estate embraced in the deed dated February 17, 1899, from O. Soehner and J. Dister to the Cincinnati, Hamilton & Dayton Railway Company and recorded in the office of the recorder of Montgomery County, Ohio, in Book 223, at page 51, and including, also, the real estate embraced in the following deeds:

(1) Deed dated October 24, 1912, from Samuel Berger and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 342, at page 360;

(2) Deed dated July 2, 1912, from Model Milling Company to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Mercer County, Ohio, in Book 83, at page 596;

(3) Deed dated September 30, 1905, from Fred Freeders and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County Ohio, in Book 269, at page 276;



(4) Deed dated July 16, 1896, from O. Montgomery et al. to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 210, at page 137;

(5) Deed dated March 26, 1900, from A. Coffman to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 229, at page 279;

(6) Deed dated November 22, 1892, from S. B. Smith and wife to the Cincinnati, Dayton & Chicago Railway Company;

(7) Deed dated September 7, 1895, from J. Henley and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Miami County, Ohio, in Book 101, at page 451;

(8) Deed dated May 28, 1904, from heirs of John G. Schaefer to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Miami County, Ohio, in Book 124, at page 257;

(9) Deed dated April 29, 1904, from I. C. Finfrack and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Miami County, Ohio, in Book 123, at page 489;

(10) Deed dated May 3, 1894, from B. F. Southworth and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, Ohio, in Book 71, at page 143.

(11) Deed dated January 8, 1895, from F. L. Wagoner and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, Ohio, in Book 72, at page 248;

(12) Deed dated May 11, 1895, from J. A. Patterson and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, Ohio, in Book 71, at page 578;

(13) Deed dated August 13, 1896, from A. Palmer et al. to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Mercer County, Ohio, in Book 71, at page 58;

(14) Deed dated July 14, 1893, from J. Stauffer to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 43, at page 423;

(15) Deed dated July 6, 1895, from heirs of George L. Snyder to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 47, at page 135;

(16) Deed dated November 20, 1899, from S. Barnett to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 57, at page 63;

(17) Deed dated November 30, 1908, from J. Helstern and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 304, at page 332;

Together with the reversions, remainders, tolls, incomes, rents, issues and profits of the above described property and premises, and also all the estate, right, title, interest and claim, as well in law as in equity, formerly of said the Cincinnati, Dayton & Chicago Railroad Company, of, in and to the said premises, and every part thereof, with the appurtenances.

2. The special master is directed, upon the payment and settlement of the purchase price, or making provision therefor, as hereafter in this order provided, or as may be permitted by any other order or any other decree made in this cause, subject, however, to Article 31 of said final decree, to execute and deliver to Herbert Shaffer or his assigns, a deed conveying, assigning and transferring to said Herbert Shaffer, or his assigns, the property sold to said Herbert Shaffer as aforesaid; and the Railway Company, Judson Harmon and Rufus B. Smith as receivers of the property of the Railway Company, the New York Trust Company, as trustee under the first mortgage, Bankers Trust Company, as trustee under the first and refunding mortgage of the Railway Company, dated July 1, 1909 (hereinafter called the first and refunding mortgage), and Central Trust Company of New York, as trustee under general mortgage of the Railway Company, dated July 1, 1909 (hereinafter called the general mortgage), are directed to join with the special master in the execution and delivery of said deed of the property described as aforesaid to said Herbert Shaffer, or his assigns, or if said Herbert Shaffer, or his assigns, shall so request, to execute and deliver to said Herbert Shaffer, or his assigns, separate deeds or releases of all their right, title and interest of, in and to the property so conveyed, assigned and transferred to said Herbert Shaffer, or his assigns, by the special master.

3. Upon the production of said respective deeds, or certified copies thereof, the grantee or grantees therein named shall be let into the possession of the property thereby conveyed or transferred, and shall after such delivery of possession hold, possess and enjoy the property so conveyed and transferred, and every part and parcel thereof, free from any trust or lien imposed thereon by the first mortgage, and free from any trust or lien imposed thereon by the first and refunding mortgage, and free from any trust or lien imposed thereon by the general mortgage, and free from any claim, right, interest or equity of redemption of, in or to the same by or of the railway company, its successors and assigns, and by or of the creditors and stockholders of the Railway Company, and by or of any party to this cause, and all persons, partnerships and corporations, claiming by, under or through the Railway Company, its creditors or its stockholders, or any party to this cause, subject, however, to all the terms and conditions of said final decree, amended as aforesaid, and of this order and to all the reservations to the purchasers and to their assigns and to this court in said final decree, so amended, and in this order contained.

4. There shall be credited upon the purchase price of the property described as aforesaid, the distributive share, out of the proceeds of sale, of the \$300,000 principal amount of the first mortgage bonds of the Cincinnati, Dayton & Chicago Railroad Company (thereinafter called first mortgage bonds) and the appurtenant coupons held subject to the order of the special master pursuant to the certificate of the New York Trust Company, the plaintiff herein, deposited by said Herbert Shaffer with the special master as stated in his report of sale.

In advance of the delivery of said deed of the property described as aforesaid, to Herbert Shaffer, or his assigns, and within six months from the date of the entry of this order, or within such additional period as this court may hereafter by its order or decree permit, said Herbert Shaffer,

or his assigns, shall provide for the payment of the remainder of the purchase price of the property sold by depositing with the special master the sum of \$200,000 in cash or by certified check on some national bank or trust company in the City of New York or in the City of Cincinnati, acceptable to the special master and made or endorsed payable to his order, or by turning over to the special master, to be paid or cancelled, or to have payment credited thereon as provided in said final decree, first mortgage bonds of the Cincinnati, Dayton & Chicago Railroad Company in bearer form, bearing the coupons appurtenant to such bonds maturing October 1, 1914, and subsequently entitled to be paid out of the proceeds of sale on distribution thereof, as set forth in said final decree, to the principal amount of \$900,000. Said bonds and coupons shall be in bearer form or accompanied by proper transfers to the special master. In lieu of turning over to the special master said bonds, the special master may accept the certificate of the plaintiff that it holds subject to his order, first mortgage bonds of the amount therein specified, in bearer form, accompanied by the coupons therein stated. No further payment in cash shall be required on account of the purchase price of said property sold to said Herbert Shaffer unless this court shall so require, but this court reserves jurisdiction from time to time to require such further payment or payments in cash on account of said purchase price as this court may direct. This court reserves a paramount lien and charge upon the property to be conveyed as in this order provided, for the payment into this court in cash of any unpaid part of the purchase price of said property.

5. The bonds and coupons represented by any certificate or certificates of the New York Trust Company which have been or may be accepted by the special master pursuant to the provisions of the final decree, or of Article 4 of this order, shall remain with the plaintiff, to abide the further order of this court; and when the amount payable out of

the proceeds of sale upon the first mortgage bonds and appurtenant coupons shall have been determined as in said final decree provided, the special master shall give notice of the time and place where said bonds and coupons may be presented for payment as in said final decree provided, and all such bonds and coupons presented for payment shall be stamped with a notation of the credit or payment thereon of the amount so payable, and such bonds and coupons shall thereafter be delivered to the persons or corporations entitled to receive the same.

6. All questions relating to amounts of compensation, charges, allowances, costs, disbursements and expenses, referred to in said final decree are hereby respectively reserved by this court for further hearing and determination, and all payments to be made therefor, unless agreed upon by the parties in interest, shall hereafter be determined, fixed, allowed and settled by this court, and all questions not hereby disposed of are reserved for future adjudication. Any party to this cause may at any time apply to this court for further relief at the foot of this order.

Hollister, United States District Judge.

Dated October 22, 1917.

**Form No. 114****Notice of Purchaser's Election Not to Accept Certain Property**

DISTRICT COURT OF THE UNITED STATES WITHIN AND FOR THE  
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION.

IN EQUITY. No. 115

The New York Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company, Bankers  
Trust Company and Central Trust Company of  
New York, Defendants.

*Notice of Purchaser's Election Not to Accept Certain Property*

Herbert Shaffer, the purchaser of the property of the defendant, the Cincinnati, Hamilton & Dayton Railway Company (hereinafter called the Railway Company), described in the final decree entered herein April 20, 1917, and sold on October 17, 1917, by Aaron A. Ferris, the special master appointed in the above entitled cause, pursuant to said final decree does hereby elect not to take or accept the following property sold to him as a part of said property under the provisions of said final decree, and does hereby refuse to accept delivery thereof, namely:

A branch line of about one mile from the National Home for Disabled Volunteer Soldiers to the main line, about one and one-half miles from the western corporation limits of the City of Dayton.

It is expressly declared that neither the execution of this instrument, nor anything herein contained, shall affect the right conferred by said final decree, and the said Herbert Shaffer, purchaser as aforesaid, does hereby reserve to himself and his heirs and assigns, the right hereafter, from time to time, to elect not to take or accept, or to elect not to assume or to adopt, any of the property sold to him under the provisions of said final decree, and to refuse to accept delivery or continue in possession of the same.

Herbert Shaffer.

To Aaron A. Ferris, Esq., Special Master.

Due and timely service of the foregoing notice of purchaser's election not to accept certain property is hereby admitted.

Aaron A. Ferris, Special Master.

Dated, Cincinnati, Ohio, November 12, 1917.

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### **Form No. 115**

#### **Notice of Payment of Proceeds of Foreclosure Sale**

Cincinnati, Indianapolis & Western Railway Company First  
Mortgage Five Per Cent. Gold Bonds  
The Indiana, Decatur & Western Railway Company First  
Mortgage Five Per Cent. Gold Bonds

#### *Notice of Payment of Proceeds of Foreclosure Sale by Special Master*

Notice is hereby given that the United States District Court for the Southern District of Ohio, Western Division, in the causes entitled "The Equitable Trust Company of New York and Elias J. Jacoby, as trustees, complainants, against Cincinnati, Indianapolis & Western Railway Company et al., Defendants. In Equity. No. 50," and "Central Trust Company of New York and Augustus L. Mason, as trustees, complainants, against Cincinnati, Indianapolis & Western Railway Company et al., Defendants. In Equity. No. 51," has fixed the sums finally payable with respect to the bonds above named and the coupons maturing July 1, 1914, appurtenant thereto, out of the proceeds of the sale of the property sold at foreclosure, pursuant to the decrees of foreclosure entered in said causes, dated June 29, 1915, and that the undersigned will be prepared to make payments in accordance with the order of said court as follows:

To the holders of first and refunding mortgage gold bonds of Cincinnati, Indianapolis & Western Railway Company and

the coupons maturing July 1, 1914, appurtenant thereto, upon each such bond for one thousand dollars face amount the sum of \$401, and upon each such coupon maturing July 1, 1914, for twenty dollars face amount the sum of \$8.02.

To the holders of first mortgage five per cent. gold bonds of the Indiana, Decatur & Western Railway Company and the coupons maturing July 1, 1914, appurtenant thereto, upon each such bond for one thousand dollars face amount the sum of \$395.60, and upon each such coupon maturing July 1, 1914, for twenty-five dollars face amount the sum of \$9.89.

Such payment on the said bonds and coupons of both issues will be made at the office of the Equitable Trust Company of New York, No. 37 Wall Street, Borough of Manhattan, on and after January 24, 1917, upon presentation thereof for the stamping thereon of a notation of such payment.

Coupons must be accompanied by Income Tax Certificates of ownership.

Noble C. Butler, Special Master.

Dated January 16, 1917.

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## Form No. 116

### Receipt and Release by Bondholder or Mortgagee

Know all men by these presents: That A B, hereinafter called the bondholder, the owner of ——— bonds, numbered —, —, —, —, —, —, —, —, of the par value of \$1,000 each with all appurtenant coupons attached thereto maturing on and after July 1, 1914, known as the and refunding mortgage four per cent. gold bonds of the Cincinnati, Indianapolis & Western Railway Company, in consideration of the sum of \$—— to him paid by the Baltimore & Ohio Railroad Company on behalf of itself and others, the receipt of which is hereby acknowledged, does hereby remise, release and forever discharge and acquit the Cincinnati, Hamilton & Dayton



Railway Company, the Baltimore & Ohio Railroad Company, the firm of P. J. Morgan & Company as at any time composed, and the members of said firm at this time or at any prior time, and each of them, and all other persons, firms and corporations who heretofore, now or hereafter have been at any time, or may have become the owners or holders, either at law or in equity, or by statute, of any shares of the capital stock of said the Cincinnati, Hamilton & Dayton Railway Company, or of any interest therein, whether as owners or holders of the legal or equitable title to said shares, or of any other legal or beneficial interest therein, and whether as the registered holder on the books of said company or otherwise, and all persons, firms and corporations claiming any interest whatsoever in any of said shares of stock, and all other persons, firms and corporations liable, or claimed to be liable, at any time under any of the statutes of the State of Ohio or of any other state, heretofore, now or hereafter, in force, or otherwise, in respect of any of said shares, for any of the debts, liabilities or obligations of said the Cincinnati, Hamilton & Dayton Railway Company, their successors and assigns, and each and every person at any time an officer or director of said the Cincinnati, Hamilton & Dayton Railway Company, of all and from all, and all manner of action or actions, cause or causes of action, claims or demands whatsoever, at law or in equity, and whether enforceable through, by or in the name of the bondholder or said the Cincinnati, Indianapolis & Western Railway Company or the Indiana, Decatur & Western Railway Company, or any trustee under any mortgage or deed of trust securing said bonds, or any one in their behalf or anyone claiming through or as successor to them or to their rights or interest, which against said persons, firms or corporations or any of them, or against the property of said the Cincinnati, Hamilton & Dayton Railway Company, the said bondholder or anyone in his behalf, ever had, now has, or can, shall or may have, for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the

world to the date of the execution of these presents in respect of said bonds or any and all indebtedness, obligation, or liability upon or evidenced by or arising from or in connection with or incidental to, any part of the principal of or interest upon said bonds or any of them, or any security therefor, or any guarantee or other agreement relating thereto, or any lease or other agreement of whatsoever nature executed by said the Cincinnati, Hamilton & Dayton Railway Company, or any obligation or liability of said last-named corporation of any kind, including (but without limiting the operation of the above provisions) any and all claims and causes of action under any of the statutes of the State of Ohio or of any other state heretofore, now or hereafter in force, which may create any liability for the debts or obligations of said the Cincinnati, Hamilton & Dayton Railway Company by virtue of ownership or holding of shares of capital stock of said company or of any interest therein. Simultaneously with the execution of this release said bondholder has caused each of said bonds to be stamped with the following legend:

“Every holder from time to time of this bond is bound by a release dated ———, 1917, executed by the then owner hereof, a copy of said release being open to inspection at the office of the Baltimore & Ohio Railroad Company, Baltimore, Md., providing among other things for a release and discharge of the Cincinnati, Hamilton & Dayton Railway Company and each and all of its stockholders, officers and directors from all liability hereon.”

In witness whereof said bondholder has hereunto set his hand and seal this ——— day of ———, A. D. 1917.

Witness: ———.

**Form No. 117****Special Master's Deed of Railway**

Indenture, dated November 13, 1917, between Aaron A. Ferris, as special master, appointed by and referred to in the final decree made and entered in the cause hereinafter mentioned April 20, 1917, and referred to in the orders amending said final decree entered in said cause July 17, 1917, and August 8, 1917 (hereinafter called the special master), party of the first part; and

Herbert Shaffer (hereinafter sometimes called the purchaser), party of the second part.

Whereas, in a certain cause pending in the District Court of the United States for the Southern District of Ohio, Western Division, entitled "The New York Trust Company, Plaintiff, against the Cincinnati, Hamilton & Dayton Railway Company, Bankers Trust and Central Trust Company of New York, Defendants. In Equity. No. 115," there was made and entered on April 20, 1917, a final decree, whereby among other things, it was ordered, adjudged and decreed that said the Cincinnati, Hamilton & Dayton Railway Company, hereinafter called the Railway Company, or some one in its behalf, should, within five days after the entry of said final decree, pay or cause to be paid to the New York Trust Company, for the use and benefit of the holders of the outstanding five per cent. first mortgage gold bonds of the Cincinnati, Dayton & Chicago Railroad Company and of the coupons thereunto appertaining, secured by the first mortgage of the Cincinnati, Dayton & Chicago Railroad Company to Continental Trust Company of the City of New York, dated April 1, 1892 (hereinafter called the first mortgage), the sum of \$1,352,586.66 found by said final decree to be the sum due from the Railway Company to the New York Trust Company as trustee under said first mortgage, with interest thereon at the rate of four per cent. per annum from the date of said final decree to the date of payment, and the costs, disbursements and outlay incurred in said cause; and

Whereas, neither the Railway Company nor any one on its behalf has paid or caused to be paid said sum or any sum, although more than five days have elapsed since the entry of said final decree; and

Whereas, by said final decree it was also, among other things, ordered, adjudged and decreed that, in default of said payment within the period fixed by said final decree, the right, title and equity of redemption of the Railway Company and of each and all persons, partnerships and corporations claiming under it, in and to the mortgaged property and every part and parcel thereof, including all right, title and equity of redemption of Bankers Trust Company, as trustee under the first and refunding mortgage of the Railway Company, dated July 1, 1909 (hereinafter called the first and refunding mortgage), and all right, title and equity of redemption of Central Trust Company of New York, as trustee under the general mortgage of the Railway Company, dated July 1, 1909 (hereinafter called the general mortgage), should be forever barred and foreclosed, and the property described in the first mortgage should be sold free and clear of all interest, liens and claims of any and all parties to said cause and of each and all such persons, partnerships and corporations as might thereafter become or be made parties to said cause, and of each and all persons, partnerships and corporations claiming under them or any of them, to or upon said property or any part thereof, in the manner and subject to the provisions in said final decree set forth, and that said sale should be made at the place where the mortgaged lines of railway cross the line of Germantown Avenue, in the City of Dayton, in the State of Ohio, upon the premises formerly owned by the Cincinnati, Dayton & Chicago Railroad Company, and upon the property to be sold, on a day and at an hour to be fixed by the special master, at the request of the solicitors for the plaintiff in said cause, and that notice of the time, place and terms of sale, describing briefly the property to be sold, and referring to said final decree, should be published as therein provided; and

Whereas, by said final decree Aaron A. Ferris was appointed special master to make and conduct said sale and was directed to make and conduct said sale and to execute a deed or deeds of conveyance, assignment and transfer of the mortgaged property sold to the purchaser or purchasers thereof, or his or their assigns, upon an order confirming such sale, and upon payment or settlement of the purchase price, or making provision therefor, as in said final decree provided, or as might be permitted by any order or other decree made in said cause; and

Whereas, said final decree was amended by orders entered in said cause on July 17, 1917, and August 8, 1917, requiring said mortgaged property to be offered as an entirety and not in parcels as in said final decree provided, and requiring that the notice of sale should be published at least once a week for four consecutive weeks preceding the date of such sale in a newspaper printed, regularly issued and having a general circulation in the City of Dayton, in the State of Ohio, and in a newspaper printed, published, regularly issued and having a general circulation in the Borough of Manhattan, City of New York, State of New York, and

Whereas, September 25, 1917, at two o'clock p. m., was duly fixed by the special master at the request of the solicitors for the plaintiff in said cause as the day and hour for the said sale, and notice of the time, place and terms of said sale was duly given in accordance with the provisions of said final decree, as so amended, and in accordance with law, and on said September 25, 1917, at two o'clock p. m., at the place fixed for said sale, and at the request of the solicitors for the plaintiff, the special master as authorized and directed in said final decree, and in accordance with the terms and provisions thereof, adjourned and postponed said sale to October 17, 1917, at two o'clock p. m., at the same place, and caused further notice of said adjournment and of the time and place of said adjourned sale, describing briefly the property to be sold, and referring to said final decree, to be published as in said

final decree, as amended by said orders of July 17, 1917, and August 8, 1917, provided; and

Whereas, the special master on said October 17, 1917, at two o'clock p. m., at the place where the mortgaged lines of railway cross the line of Germantown Avenue in the City of Dayton, in the State of Ohio, upon the premises formerly owned by the Cincinnati, Dayton & Chicago Railroad Company, and upon the property to be sold, pursuant to and in accordance with all the provisions of said final decree, as amended by said orders of July 17, 1917, and August 8, 1917, sold at public auction to Herbert Shaffer the property described in said final decree, as an entirety, for the sum of \$275,000, the said purchaser being the highest bidder for said property at said sale and having duly qualified as bidder thereat for said property in the manner provided in said final decree; and

Whereas, the special master did after said sale and on or about October 18, 1917, make a report of said sale to the District Court of the United States for the Western Division of the Southern District of Ohio and said report was duly filed in the office of the clerk of said court on said day; and

Whereas, thereafter, by an order duly made and entered October 22, 1917, by said District Court of the United States for the Western Division of the Southern District of Ohio in said cause (hereinafter called the order of confirmation), said report was in all things confirmed, and the sale to said purchaser of the property sold to him as above set forth was made final and absolute, and said court directed the manner in which the purchase price of said property should be paid or provided for; and

Whereas, thereafter, by a notice in writing to the special master, filed November 12, 1917, with the clerk of said court, in said cause, the purchaser elected not to take or accept the following property struck off to him:

A branch line of about one mile from the National Home for Disabled Volunteer Soldiers to the main line about one

and one-half miles from the western corporation limits of the City of Dayton; and

Whereas, that portion of the purchase price of said property sold to the purchaser as above set forth, which was required to be paid in advance of the delivery of instruments of conveyance and transfer has been so paid or settled or provision for the payment thereof has been made in manner approved by said court, as by said order of confirmation provided; and

Whereas, by said order of confirmation the special master was directed, upon payment and settlement of the purchase price or making provisions therefor as by said order of confirmation provided, to execute and deliver to the purchaser a deed of the property sold to him;

Now, therefore, this indenture witnesseth, That said Aaron A. Ferris, as special master as aforesaid, party of the first part, in order to carry into effect said sale to the purchaser, and in pursuance of said final decree and said order of confirmation and in consideration of the aforesaid payment of and provision for the purchase price, the receipt of which is hereby acknowledged, has granted, bargained, sold, aliened, remised, released, conveyed, confirmed, assigned, transferred and set over and by these presents does grant, bargain, sell, alien, remise, release, convey, confirm, assign, transfer and set over unto Herbert Shaffer, party of the second part, his heirs and assigns forever, the following property of or formerly of the Railway Company, being all the property adjudged by said final decree to be embraced in the first mortgage, including every interest in said property acquired and held by Judson Harmon and Rufus B. Smith as receivers of the property of the Railway Company, said property being more particularly described as follows:

All that portion of the line of railway formerly belonging to the Dayton, Fort Wayne & Chicago Railway Company, situated in the Counties of Allen, Van Wert, Mercer, Darke, Miami and Montgomery, in the State of Ohio, and beginning

at Delphos in Allen County and running in a southerly direction through Spencerville in said Allen County, Versailles in Darke County, Covington and West Milton in Miami County, Stillwater Junction and Dayton in Montgomery County, to the said City of Dayton, in said last-named county, together with a branch line of about one mile from the National Home for Disabled Volunteer Soldiers to the main line about one and one-half miles from the western corporation limits of said City of Dayton, together with all the property of a corporate nature, or ownership of every kind formerly belonging to the Cincinnati, Dayton & Chicago Railroad Company and owned and used by it in constructing, managing or operating its road, including all property, real and personal, together with all the rolling stock, equipments and locomotives at any time owned or acquired by it or its constituent companies or predecessors for constructing, repairing, operating, replacing or maintaining its railroad conveyed by the first mortgage, and all real estate acquired for use in connection therewith; also all rights of way, roadbeds and the entire superstructures thereof, and track at any time placed thereon, and all stations, depots, shops, yards and other grounds at any time used in connection therewith; and all steel and iron rails, ties, railways, sidings, switches, bridges, fences, turntables, water tanks, viaducts, freight houses, car and engine houses, machine shops and all other structures, buildings and fixtures whatsoever; and all tools, implements, machinery, fuel, furniture, fixtures, materials and supplied, owned or acquired by it in constructing, repairing, operating, replacing and maintaining its said railroad; also all the rights, franchises, privileges, immunities and easements, and all leases, leaseholds, including all corporate franchises connected with said line of railroad and property and all other property of whatever nature, real or personal, at any time acquired or owned by said the Cincinnati, Dayton & Chicago Railroad Company, including the real estate embraced in the deed dated February 17, 1899, from O. Soehner and J. Dister to the Cincinnati, Hamilton & Dayton Railroad Company and recorded in the office of the



recorder of Montgomery County, Ohio, in Book 223, at page 51, and including, also, the real estate embraced in the following deeds:

(1) Deed dated October 24, 1912, from Samuel Berger and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 342, at page 360;

(2) Deed dated July 2, 1912, from Model Milling Company to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Mercer County, Ohio, in Book 83, at page 596;

(3) Deed dated September 30, 1905, from Fred Freeders and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 269, at page 276;

(4) Deed dated July 16, 1896, from O. Montgomery et al. to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 210, at page 137;

(5) Deed dated March 26, 1900, from A. Coffman to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 229, at page 279;

(6) Deed dated November 22, 1892, from S. B. Smith and wife to the Cincinnati, Dayton & Chicago Railroad Company;

(7) Deed dated September 7, 1895, from J. Henley and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Miami County, Ohio, in Book 101, at page 451;

(8) Deed dated May 28, 1904, from heirs of John G. Schaefer to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Miami County, Ohio, in Book 124, at page 257;

(9) Deed dated April 29, 1904, from I. C. Finfrack and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Miami County, Ohio, in Book 123, at page 489;

(10) Deed dated May 3, 1894, from B. F. Southworth and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, in Book 71, at page 143;

(11) Deed dated January 8, 1895, from F. L. Wagoner and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, Ohio, in Book 72, at page 248;

(12) Deed dated May 11, 1895, from J. A. Patterson and wife to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Allen County, Ohio, in Book 71, at page 578;

(13) Deed dated August 13, 1896, from A. Palmer et al. to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Mercer County, Ohio, in Book 71, at page 58;

(14) Deed dated July 14, 1893, from J. Stauffer to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 43, at page 423;

(15) Deed dated July 6, 1895, from heirs of George L. Snyder to the Cincinnati, Dayton & Chicago Railroad Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 47, at page 135;

(16) Deed dated November 20, 1899, from S. Barnett to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Van Wert County, Ohio, in Book 57, at page 63;

(17) Deed dated November 30, 1908, from J. Helstern and wife to the Cincinnati, Hamilton & Dayton Railway Company, recorded in the office of the recorder of Montgomery County, Ohio, in Book 304, at page 332;

Together with the reversions, remainders, tolls, incomes, rents, issues and profits of the above described property and premises, and also all the estate, right, title, interest and claim, as well in law as in equity, formerly of said the Cincinnati, Dayton & Chicago Railroad Company, of, in and to the said premises, and every part thereof, with the appurtenances:

Excepting therefrom, however, the property which the purchaser by notice in writing to the special master filed with the clerk of said court, in said cause, has elected not to take or accept, namely:

A branch line of about one mile from the National Home for Disabled Volunteer Soldiers to the main line about one and one-half miles from the western corporation limits of the City of Dayton.

To have and to hold, possess and enjoy all and singular the above-mentioned real and personal property, rights, franchises, privileges and immunities thereto appertaining hereby conveyed or intended so to be, unto said Herbert Shaffer, his

heirs and assigns forever, free and discharged from any trust or lien imposed thereon by the first mortgage, and free and discharged from any trust or lien imposed thereon by the general mortgage, and from and discharged from any claim, right, interest or equity or redemption of, in or to the same by or of the Railway Company, its successors and assigns, and by or of the creditors and stockholders of the Railway Company and by or of any part to said cause and by or of all persons, partnerships and corporations claiming by or under or through the Railway Company, its creditors or its stockholders, or any party to said cause.

Subject, however, to the paramount lien and charge reserved by said court upon said property for the payment into said court in cash of any unpaid part of the purchase price thereof.

Subject, also, to all terms, conditions and reservations of said final decree and of said order of confirmation, whether in this indenture expressly referred to or not.

No personal covenant or liability shall be implied against or is assumed or undertaken by the special master, by reason of the execution of this indenture or any recital or covenant herein contained.

The fact of purchase and the acceptance of this indenture by the purchaser shall not be construed as an election to accept any contract, agreement or lease sold as part of the property offered pursuant to said final decree or embraced herein, and nothing in this indenture contained shall be construed to constitute an assumption or adoption by the purchaser of any lease, agreement or contract made by the Railway Company or by the receivers as part of the property embraced herein; but the purchaser, his heirs and assigns, shall have the right for a period of six months after the delivery of this indenture to elect whether or not to assume or to adopt as part of the property embraced herein any lease or contract made by the Railway Company which is included in the property sold and hereby conveyed by them or

which may constitute an incident or appurtenance thereof, and the purchaser, his heirs and assigns, shall be held not to have assumed or to have adopted any lease or contract in respect of which the purchaser, his heirs and assigns, shall not have filed written election to assume or adopt the same with the clerk of the United States District Court for the Western Division of the Southern District of Ohio, within said period of six months, or within such additional period as said court may hereafter by its order or decree permit.

In order to facilitate the recording of this indenture, ten originals thereof have been executed, acknowledged and delivered, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

In witness whereof, the special master has hereunto set his hand as of the day and year first above written.

(Signed) Aaron A. Ferris, as Special Master.

Signed and acknowledged in the presence of

(Signed) Adolph Levy,

(Signed) Paul Dewald.

State of Ohio, Hamilton County, ss.:

Be it remembered that on November 13, in the year of our Lord 1917, before me, the undersigned, a notary public in and for said county and state, personally appeared the above-named Aaron A. Ferris, who duly acknowledged that he had executed the foregoing instrument as his free and voluntary act and deed for the uses and purposes therein named.

Witness my hand and notarial seal at Cincinnati, Hamilton County, Ohio, on the day and year last above written.

(Signed) Paul Dewald, Notary Public, Hamilton County, O.  
My commission expires March 23, 1918.

## FORMS IN RECEIVERS' SALES

**Form No. 118****Application of Receiver to Sell Personalty**

A. B., Plaintiff,  
v.  
C. D., Defendant.

*Application of Receiver for Order to Sell Personal Property*

Now comes ———, receiver herein, and represents to the court that there is still in his hands personal property as shown in the annexed schedule marked Exhibit and respectfully recommends that an order be entered directing that so much of the same as remains unsold at the time of the public sale of real estate, to wit, ———, date ——— be offered at public sale at said time and place.

———, Attorneys for Receiver.

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**Form No. 119****Application of Receiver to Sell Real Estate**

A. B., Plaintiff,  
v.  
C. D., Defendant.

*Application for Order to Sell Real Estate*

Now comes ———, heretofore appointed receiver herein, and represents to the court that the defendant ———, was on the day of his appointment as such receiver the owner of real estate situate in ——— County, Ohio, bounded and described as follows, to wit: ———.

Said receiver further represents that to procure funds with which to pay the debts due and owing by the defendant it will be necessary to sell said real estate.

Wherefore said receiver asks the court for an order appointing appraisers to appraise said real estate in order that same may be sold, and that after said appraisalment is returned, the court order him as such receiver to sell in such manner as the court may direct the said real estate at public sale and convey all the right, title and interest of said ———, the defendant herein, in and to said property to the purchasers, and for such further orders as the court may deem proper.

———, Attorney for Receiver.

State of ———, County of ———, ss.:

———, being first duly sworn, says that the allegation of the foregoing application is true as he verily believes.

Sworn to and subscribed before me this ———.

[SEAL]

## Form No. 120

### Application of Receiver for Authority to Sell Real Estate (Another Form)

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON PLEAS.  
No. 146490

Samuel P. Suit, Plaintiff,

v.

The Zapf Wagon & Lumber Company, Defendant.

#### *Application of Receiver for Authority to Sell Real Estate*

Now comes Edward O. Brater, receiver herein, and represents to the court that the real estate owned by the Zapf Wagon & Lumber Company and in possession of this receiver under orders of this court is described as follows:

All the following lot of land known and numbered as Lot No. 4 of a subdivision of ground made by Frank M. Steele, known as Frank M. Steele's Subdivision of North Bend, in Hamilton County, Ohio, said Lot No. 4 being sixty feet in

front on the west side of Miami Avenue by a depth of 100 feet, as will more fully appear from the plat as recorded in Plat Book No. 8-2, page 20, of the Records of Hamilton County, Ohio, being the same premises conveyed to the Zapf Wagon & Lumber Company by John Zapf et al., by deed recorded in Deed Book 963, page 588, of the Hamilton County, Ohio, Records.

The following described real estate, to wit: In Miami Township, section No. 20, fractional range 2, of the Miami Purchase, Hamilton County, Ohio, and more particularly described as being all that part of Lot No. 40, 41 and 42 which lies north of Cincinnati Avenue in Woodruff's Subdivision of North Bend, Ohio, as shown on Plat Book No. 3, pages 216 and 217, of the Records of Hamilton County, Ohio; being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel P. Suit and Walter S. Suit, by deed recorded in Deed Book 967, page 234, of the Hamilton County, Ohio, Records.

The following described real estate situated in North Bend, Hamilton County, Ohio, to wit: Being in the subdivision of Edward Woodruff of the Village of North Bend, in section 20, town 1, fractional range 2, of the Miami Purchase, as the same is recorded in Plat Book No. 3, pages 216 and 217, of the real estate records of said county, and being all of Lot No. 39 of said subdivision, and being 162½ feet front on the north side of Cincinnati Avenue, by 174.6 feet west of Symmes Avenue, and being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel P. Suit and Walter S. Suit by deed recorded in Deed Book 967, page 234 of the Hamilton County, Ohio, Records.

Edward O. Brater, receiver herein, further represents:

That the same is clear, free and unincumbered, except as to taxes due June 20, 1910, and December 20, 1910; and further, except a mortgage of five hundred (\$500) dollars in favor of the Southern Ohio Loan & Trust Company on Lot No. 39 in Woodruff's Subdivision of North Bend.

That the personal property owned by the Zapf Wagon & Lumber Company and as shown in the inventory and appraisal heretofore filed to be of the value of \$——, will not be of sufficient value, when sold, to pay all the liabilities of the Zapf Wagon & Lumber Company, which, so far as your receiver is at present advised, amount to about \$——.

That, under the orders of court, the receiver has kept the business of said company going up to December 3 and preserved its trade and goodwill, and although he believes that, during his receivership, he has made expenses, nevertheless, he does not believe that he has earned a profit for the company, and it is the opinion of your receiver that it would not be profitable to carry on said receivership until all the debts can be paid from the earnings in the natural order of business, but that it would be for the best interest of the creditors and all others interested in the property of the company to have a sale of all the real estate of the said company, as shown in this application.

Wherefore, your receiver prays that he may be ordered to advertise and sell all of said real estate in such a manner as the court may deem for the best interest of all concerned, and that the said Southern Ohio Loan & Trust Company may be made a party defendant to this cause and required to set up its claim and for all other proper relief.

——, Attorney for Receiver.

State of Ohio, Hamilton County, ss.:

Edward O. Brater, being first duly sworn, says that he is the receiver of the Zapf Wagon and Lumber Company, and that the facts stated in the foregoing application are true as he verily believes.

Subscribed and sworn to before me this —— day of December, 1910.

——, Notary Public, Hamilton County, Ohio.



**Form No. 121****Notice of Motion for Order of Sale**

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL  
CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA. No. 11950

Atlantic Trust Company, Plaintiff,

v.

Woodbridge Canal & Irrigation Company et al., Defendants.

*Notice of Motion for Order of Sale*

Take notice that on Monday, August 24, 1896, at eleven o'clock a. m., or as soon thereafter as counsel can be heard, at the courtroom of the above entitled court in the City and County of San Francisco, State of California, the receiver heretofore appointed by the court in the above entitled cause, by his counsel, will move the court for an order authorizing and directing the said receiver to sell at public auction, upon notice thereof duly given, to the highest and best bidder therefor for gold coin of the United States, the dams, canals, ditches, water rights, real property, irrigation works and plant belonging to defendant and covered by the mortgage of plaintiff and now in the possession of said receiver, and out of the proceeds thereof to pay off the unpaid balance of expenses incurred by said receiver in the care and management of the property, together with his compensation and counsel fees to be fixed by the court, paying the balance of the proceeds of such sale into court to abide by the final determination of the court in this cause and such disposition thereof as the court shall direct; or for such other order or relief as the court may direct.

Said motion will be made on the report of said receiver bearing date this day, and a copy of which is herewith served upon you, and on the ground that the same is perishable property, constantly suffering and depreciating in value for want of funds for the proper management and care thereof, and that in the present condition of the property sufficient funds for

such management and care can not be realized from the income of the property.

Fox, Kellogg & Gray, Attorneys for Receivers.

To Messrs. Page, Eells & Wheeler, Attorneys for Plaintiff; D. Titus, Esq., Attorney for Defendant; W. M. Cannon, Esq., Attorney for certain intervenors; Edward P. Cole, Esq., Attorney for Petitioner, William C. Pidge.

Dated August 13, 1896.

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### Form No. 122

#### Motion to Make Mortgagee Party Defendant

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON PLEAS.  
No. 146490

Samuel P. Suit, Plaintiff,

v.

The Zapf Wagon & Lumber Company, Defendant.

#### *Motion*

Now comes Edward O. Brater, receiver herein, and moves the court to order the Southern Ohio Loan & Trust Company to be made a party in the within cause of action.

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**Form No. 123****Entry Making Mortgagee Party Defendant**

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON PLEAS.  
No. 146490

Samuel P. Suit, Plaintiff,  
v.

The Zapf Wagon & Lumber Company, Defendant.

*Entry Making Southern Ohio Loan & Trust Company  
Party Defendant*

Upon motion of plaintiff, and it being made to appear to the satisfaction of the court that the Southern Ohio Loan & Trust Company is a necessary party to a complete determination of the questions arising in the above entitled action, it is ordered that said the Southern Ohio Loan & Trust Company be and is hereby made a party defendant herein.

It is also further ordered that service of summons be made upon it according to law.

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**Form No. 124****Answer of Mortgagee Setting Up Interest**

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON PLEAS.  
No. 146490

Samuel P. Suit, Plaintiff,  
v.

The Zapf Wagon & Lumber Company et al., Defendants.

*Answer and Cross-petition of the Southern Ohio Loan &  
Trust Company*

Now comes the Southern Ohio Loan & Trust Company, one of the defendants in this action, and for answer to the petition of the plaintiff, says that it is a corporation organized and doing business under the laws of the State of Ohio, with its principal place of business in the City of Cincinnati,

County of Hamilton and State of Ohio; that it has no knowledge or information of the allegations contained in plaintiff's petition herein, and it therefore denies the same and asks strict proof thereof, except as they may hereafter be specifically admitted in this answer and cross-petition.

And by way of answer and cross-petition and as a first cause of action this defendant says that the Zapf Wagon & Lumber Company, a corporation, is indebted to it in the sum of five hundred (\$500) dollars with interest at six per cent. from May 6, 1910, and with interest at eight per cent. on all past due interest, upon a promissory note of which the following is a copy, to wit:

\$500

Cincinnati, Ohio, May 6, 1910.

One year after date we promise to pay to the order of the Southern Ohio Loan & Trust Company \$500 at its office, for value received, with interest at the rate of six (6) per cent. per annum, payable semi-annually, on June 15 and December 15 each year, until paid. All overdue interest to draw interest at the rate of eight per cent. per annum.

(Signed) The Zapf Wagon & Lumber Company,  
By Frank M. Steele, President.  
By H. Robert Steele, Secretary.

At the time of the execution and delivery of said note to this defendant, said note contained the following indorsements:

Frank M. Steele, S. P. Suit, John Zapf, H. Robert  
Steele, E. O. Brater.

This defendant prays judgment on said note in the sum of five hundred (\$500) dollars with interest at six per cent. from May 6, 1910, and with interest at eight per cent. on all past due interest.

And by way of further answer and cross-petition, and as a second cause of action this defendant says that at the time of the execution and delivery of said note, and for the purpose of securing the payment of the same, the said defendant, the Zapf Wagon & Lumber Company, by its proper officers thereunto duly authorized by resolution of the board of directors of said corporation, executed and delivered to this de-

fendant its certain mortgage deed, whereby it conveyed to this defendant the following described real estate, being a part of the real estate described in plaintiff's petition herein:

"Situate in the Village of North Bend, County of Hamilton, and State of Ohio, and known as being in the subdivision of Edward Woodruff of the Village of North Bend in section twenty (20), town one (1), fractional range two (2) of the Miami Purchase, as the same is recorded in Plat Book No. 3, pages 216 and 217 of the real estate records of said county, and being all of Lot No. thirty-nine (39) of said subdivision, and being one hundred sixty-two and one-half ( $162\frac{1}{2}$ ) feet front on the north side of Cincinnati Avenue, and one hundred seventy-four and six-tenths (174.6) feet west of Symmes Avenue, being the same premises conveyed to the Zapf Wagon & Lumber Company, January 24, 1907, by deed recorded in Book 967, page 234, of the Records of Deeds of Hamilton County, Ohio."

Said mortgage bears date of May 14, 1910, and was filed for record in the office of the county recorder of Hamilton County, Ohio, on May 27, 1910, at 12:07 o'clock p. m., and has been duly recorded in Mortgage Book No. 920, page 315, of the Records of Mortgages of Hamilton County, Ohio.

Said mortgage was conditioned as follows:

"The conditions of this deed are such that, whereas the said the Zapf Wagon & Lumber Company has executed and delivered to the said the Southern Ohio Loan & Trust Company one (1) promissory note dated as follows: Cincinnati, Ohio, May 6, 1910, and for the sum of five hundred (\$500) dollars, payable in one (1) year from the date thereof, at the office of said company, with interest at the rate of six (6) per cent. per annum, payable semi-annually, on June 15 and December 15 until paid. The principal to become due on failure to pay the interest punctually as above stipulated at the option of the grantee. But all overdue interest shall draw interest at the rate of eight (8) per cent. until paid.

"It is one of the conditions of this deed that the grantor hereof, its successors or assigns, shall keep all taxes and assess-

ments against said property fully paid and also keep the improvements on said real estate insured to the amount of five hundred dollars (\$500) for the benefit of said grantee as additional security in companies which shall be satisfactory to said grantee during the existence of said debt, and to deliver to said grantee all policies and renewal receipts relating to said insurance, to be held until said principal note and interest are fully paid. Said grantee shall have the right to pay any assessments, taxes or insurance premiums which may be due and unpaid by the grantor hereof, its successors or assigns, and the amount so paid shall then be added to the principal debt named herein, and bear interest at the rate of eight (8) per cent. per annum from the date of said payment, and be secured by this mortgage, the same as said principal sum and interest thereon.

"Now, if the said the Zapf Wagon & Lumber Company, or its successors or assigns, shall well and truly pay the aforesaid promissory note, interest, taxes, assessments and insurance, according to the tenor of said note and the above stipulations, to the said the Southern Ohio Loan & Trust Company, its successors or assigns, then the above deed shall be void, otherwise to remain in full force and virtue in law."

This defendant says that said mortgage deed has become absolute by reason of condition broken, in that the defendant, the Zapf Wagon & Lumber Company, has failed to pay the interest on said promissory note which was due on December 15, 1910, in accordance with the terms and conditions of said note, and that this defendant is entitled to have said mortgage foreclosed by due process of law. This defendant further says that said mortgage is the first and best lien upon the real estate therein described.

Wherefore this defendant joins in the prayer of the petition of the plaintiff, and asks that the real estate described herein may be ordered sold; that out of said sale it may be ordered paid the amount found due this defendant; that it may have judgment against the indorsers of said note, to wit: Frank M.

Steele, S. P. Suit, John Zapf, H. Robert Steele and E. O. Brater for any amount which may remain unpaid after the application of the proceeds arising from said sale, and for such other and further relief as the law and equity of the case demands.

\_\_\_\_\_,  
Attorneys for the Southern Ohio Loan & Trust Company.

State of Ohio, Hamilton County, ss.:

M. S. Todd, being first duly sworn, says he is the president of the Southern Ohio Loan & Trust Company, answering defendant herein; that he has read the foregoing answer and cross-petition and that the allegations therein contained are true as he verily believes.

\_\_\_\_\_,  
Sworn to before me and subscribed in my presence this  
\_\_\_\_\_ day of \_\_\_\_\_, A. D. 19—.

\_\_\_\_\_, Notary Public, Hamilton County, Ohio.

## Form No. 125

### Entry Appointing Appraisers of Real Estate

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON PLEAS.  
No. 146490

Samuel P. Suit, Plaintiff,

v.

The Zapf Wagon & Lumber Company, Defendant.

### *Entry Appointing Appraisers for Real Estate*

This cause coming on to be heard upon the application of Edward O. Brater, receiver herein, for authority to sell real estate in his said application described and in his hands as such receiver by order of this court, and belonging to said defendant, the Zapf Wagon & Lumber Company, and upon answer and cross-petition of the Southern Ohio Loan & Trust

Company, and it appearing to the court that it will be for the best interests of said trust and parties interested therein, it is ordered by the court that the said receiver cause said premises to be appraised by the oaths of C. W. Caine, G. W. Yancey and J. G. Lowe, three disinterested freeholders of the vicinity.

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## Form No. 126

### Appraisement of Real Estate and Personalty

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON PLEAS.  
No. 146490

Samuel P. Suit, Plaintiff,  
v.

The Zapf Wagon & Lumber Company, Defendant.

### *Appraisement of Real Estate*

State of Ohio, Hamilton County, ss.:

We, the undersigned, disinterested freeholders of the vicinity, do make solemn oath that we will truly, honestly and impartially appraise the real estate that may be exhibited to us, belonging to the Zapf Wagon & Lumber Company, in the hands of Edward O. Brater, receiver, and perform the other duties required by law of us in the premises as appraisers etc., according to the best of our knowledge and ability.

W. W. Taylor, G. W. Yancey, C. W. Caine, Appraisers.

Sworn to and subscribed before me this 20th day of May, 1912.

Ralph E. Clark, Notary Public, Hamilton County, Ohio.

We, the undersigned, appraisers of the real estate belonging to the Zapf Wagon & Lumber Company, in the hands of Edward O. Brater, receiver after being duly sworn, have made an appraisement thereof, etc., as follows:

All the following lot of land known and numbered as Lot No. 4 of a subdivision of ground made by Frank M. Steele, known as Frank M. Steele's Subdivision of



North Bend, in Hamilton County, Ohio, said Lot No. 4 being sixty (60) feet in front on the west side of Miami Avenue by a depth of one hundred (100) feet, as will more fully appear from the plat as recorded in Plat Book No. 8-2, page 20, of the records of Hamilton County, Ohio, being the same premises conveyed to the Zapf Wagon & Lumber Company by John Zapf et al., by deed recorded in Deed Book 963, page 588, of the Hamilton County, Ohio, records.

Appraised at—Lot .....	\$ 100
Building .....	100

The following described real estate, to wit: In Miami Township, Section No. 20, Fractional Range 2, of the Miami Purchase, Hamilton County, Ohio, and more particularly described as being all that part of Lots Nos. 40, 41 and 42 which lies north of Cincinnati Avenue in Woodruff's Subdivision of North Bend, Ohio, as shown on Plat Book No. 3, pages 216 and 217 of the records of Hamilton County, Ohio; being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel P. Suit and Walter S. Suit, by deed recorded in Deed Book 967, page 234, of the Hamilton County, Ohio, records.

Appraised at—Lot No. 40.....	\$ 75
Lot No. 41.....	75
Lot No. 42.....	125

The following described real estate situated on North Bend, Hamilton County, Ohio, to wit: being in the Subdivision of Edward Woodruff of the Village of North Bend, in Section 20, Town 1, Fractional Range 2 of the Miami Purchase, as the same is recorded in Plat Book No. 3, pages 216 and 217 of the real estate records of said county, and being all of Lot No. 39 of said subdivision, and being 162½ feet front on the north side of Cincinnati Avenue by 174.6 feet west of Symmes Avenue, and being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel P. Suit and Walter S.

Suit by deed recorded in Deed Book 967, page 234,  
of the Hamilton County, Ohio, records.

Appraised at—Land .....	\$ 150
Building .....	600
Total .....	\$1,225

W. W. Taylor, G. W. Yancey, C. W. Caine, Ap-  
praisers.

Sworn to and subscribed before me this day, May 20, 1912.

Ralph E. Clark, Notary Public, Hamilton County,  
Ohio.

*Appraisement of Personality*

State of Ohio, Hamilton County, ss.:

We, the undersigned, do make solemn oath that we will  
truly, honestly, and impartially appraise the property that  
may be exhibited to us belonging to the Zapf Wagon &  
Lumber Company in the hands of Edward O. Brater, receiver,  
and perform the other duties required by law of us in the  
premises, as appraisers, etc., according to the best of our  
knowledge and ability.

W. W. Taylor, G. W. Yancey, C. W. Caine, Ap-  
praisers.

Sworn to and subscribed before me this day, May 20, 1912.

Ralph E. Clark, Notary Public, Hamilton County,  
Ohio.

We, the undersigned, appraisers of the property of the  
Zapf Wagon & Lumber Company in the hands of Edward O.  
Brater, receiver, after being duly sworn, have made an inven-  
tory and appraisement thereof, etc., as follows:

No. of Item	Property Appraised	Value
	Blacksmith Tools	
1	Large bellows, tuyer and pipe.....	\$ 5.00
1	Power fan, blower and pipe connection.....	10.00
1	Steam and hand power post drill.....	25.00
1	Tire bender .....	5.00
1	Large mandrel .....	2.00

No. of Item	Property Appraised	Value
1	Small mandrel .....	\$ 1.00
2	Anvils .....	8.00
1	Swage block .....	2.00
2	Blacksmith vices .....	10.00
60	Forging hammers .....	—
60	Forging bottom swages .....	5.00
35	Punches .....	.50
25	Heading tools .....	1.00
60	Pair tongues .....	10.00
7	Wrenches .....	—
2	Iron wagon jacks.....	1.50
2	Wooden wagon jacks.....	1.00
1	Set $\frac{1}{4} \times \frac{3}{4}$ cutting dies and stocks.....	—
2	Wheel travelers .....	.40
Woodworking Machinery		
1	Hub boring machine, Eureka, Syracuse, N. Y.....	15.00
1	20-inch planer, Fay & Egan.....	—
1	Scroll saw .....	1.50
16	Bits .....	—
1	Steam engine .....	10.00
1	Lot wagon maker patterns.....	2.50
Stock on Hand		
2	Rough tongues .....	—
8	Sets wagon rims .....	15.00
5	Sets wagon spokes.....	8.00
1	Open wagon body.....	3.00
1	Wagon top, unfinished.....	2.00
1	Wagon body and top.....	10.00
3	Hay wagon ladders.....	4.00
Secondhand Wagons		
1	Light, 3-spring, one-horse wagon and top.....	—
5	Front and 3 hind wagon hounds.....	25.00
4	Wagon wheels without tires.....	10.00
1	Lot bar iron.....	20.00
Total .....		\$213.40
May 20, 1912.		

W. W. Taylor, G. W. Yancey, C. W. Caine.

The State of Ohio, Hamilton County, ss.:

Personally appeared before me, the undersigned, notary public, in and for the said county, Edward O. Brater, receiver of the Zapf Wagon & Lumber Company, who upon oath deposeth and saith, that the annexed inventory and appraisement of the personal property of the said the Zapf Wagon & Lumber Company is in all respects just and true; that it contains a true and correct statement of all the personal property of the said company, which has come to the knowledge of the said Edward O. Brater, receiver, and particularly of all money, bank bills, or other circulating medium belonging to the deceased, and all claims of the said company against the said Edward O. Brater, receiver, or other persons, according to the best of his knowledge.

E. O. Brater, Address North Bend, Ohio.

Sworn to and subscribed before me, this day, May 20, 1912.

Ralph E. Clark, Notary Public, Hamilton County,  
Ohio.

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### Form No. 127

#### Confirmation of Appraisement and Order of Sale of Real Estate

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON PLEAS.  
No. 146490

Samuel P. Suit, Plaintiff,

v.

The Zapf Wagon & Lumber Company, Defendant.

#### *Confirmation of Appraisement and Order of Sale of Real Estate*

This day this cause came on to be heard upon the application of Edward O. Brater, receiver herein, for an order confirming the appraisement of the real estate of the Zapf Wagon & Lumber Company heretofore filed, and on consideration thereof, the court finds that the said appraisement

has been made and returned in conformity to law and the former orders of this court, and it is further ordered that the said appraisement be and the same is hereby approved and confirmed.

This cause coming on further to be heard upon the application of said receiver for instructions as to the sale of said real estate of the said the Zapf Wagon & Lumber Company described and enumerated in said appraisement, and on consideration thereof, the court having found that it will be necessary to sell all of said real estate of said defendant company in order to procure funds with which to pay the claims due and owing by the said defendant company, the court further finds that it will be for the best interests of the parties interested that said property be offered at public sale.

It is therefore ordered by the court that said receiver, E. O. Brater, proceed to advertise said real estate described and enumerated in said appraisement for sale by publication in a newspaper of general circulation in Hamilton County, once a week for four consecutive weeks, commencing on Friday, March 10, 1911, and that he then proceed to sell said property at public auction at the office and factory of said defendant company at North Bend, Hamilton County, Ohio, on Tuesday, April 4, 1911, at eight o'clock a. m., at not less than two-thirds of the appraised value thereof, and for cash, to wit:

All the following lot of land known and numbered as Lot No. 4 of a subdivision of ground made by Frank M. Steele, known as Frank M. Steele's Subdivision of North Bend, in Hamilton County, Ohio, said Lot No. 4 being sixty feet in front on the west side of Miami Avenue by a depth of one hundred feet, as will more fully appear from the plat as recorded in Plat Book No. 8-2, page 20, of the records of Hamilton County, Ohio, being the same premises conveyed to the Zapf Wagon & Lumber Company by John Zapf et al., by deed recorded in Deed Book 963, page 588, of the Hamilton County, Ohio, records.

Also, the following described real estate, to wit: In Miami Township, Section 20, Fractional Range 2 of the Miami Purchase, Hamilton County, Ohio, and more particularly described as being all that part of Lot No. 40, 41 and 42 which lies north of Cincinnati Avenue in Woodruff's Subdivision of North Bend, Ohio, as shown on Plat Book No. 3, pages 216 and 217, of the records of Hamilton County, Ohio; being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel P. Suit and Walter S. Suit, by deed recorded in Deed Book 967, page 234, of the Hamilton County, Ohio, records.

Also, the following described real estate situated in North Bend, Hamilton County, Ohio, to wit: Being in the Subdivision of Edward Woodruff of the Village of North Bend, in Section 20, Town 1, Fractional Range 2 of the Miami Purchase, as the same is recorded in Plat Book No. 3, pages 216 and 217 of the real estate records of said county, and being all of Lot No. 39 of said subdivision, and being 162½ feet front on the north side of Cincinnati Avenue and 174.6 feet west of Symmes Avenue, and being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel P. Suit and Walter S. Suit by deed recorded in Deed Book 967, page 234, of the Hamilton County, Ohio, records.

And said property shall be sold free from any lien or incumbrance whatsoever by or of the Southern Ohio Loan & Trust Company, a party to this suit.

Said receiver, Edward O. Brater, is further directed to report his proceedings in the premises to this court for confirmation and for further orders.

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**Form No. 128****Order of Sale of Property (Another Form)**

STATE OF MICHIGAN, IN THE CIRCUIT COURT FOR THE COUNTY  
OF GENESEE. IN CHANCERY

The Detroit Trust Company, a Corporation, Trustee,  
Complainant,

v.

Fenton Light & Power Company, a Corporation, The Independ-  
ent Power Company, a Corporation, The Detroit Con-  
struction Company, Limited, and George C.  
Webber, Defendants.

At a session of said court held at the courthouse in the  
City of Corunna, County of Shiawassee, and State of Michi-  
gan, on May 29, A. D. 1914.

Present Honorable Selden S. Miner, Circuit Judge, on  
reading and filing the amended petition of F. Alexander Beard,  
duly appointed receiver of the Fenton Light & Power Com-  
pany, a public service corporation, praying among other things,  
that all of the property and assets of said corporation may be  
sold at receiver's sale pending the final hearing and decree  
herein, and that the proceeds of such sale may be deposited by  
said receiver with the register of his court to abide its  
final order and determination herein. And after hearing  
counsel for the respective parties in respect to the matters  
alleged in said petition, and the court being fully advised in  
the premises, and having duly considered the same, therefore;

It is hereby ordered that said receiver sell at public auction  
all the property, rights, assets and credits of the said Fenton  
Light & Power Company, a Michigan public service corpora-  
tion (except its accounts receivable prior to the appointment  
of said receiver), without appraisalment and without redemp-  
tion, for cash, to the highest bidder, on July 20, A. D. 1914,  
at the Village of Fenton, County of Genesee, and State of  
Michigan, at two o'clock in the afternoon of said day, and  
that said sale be held open for at least one hour, and that  
notice thereof be given for six successive weeks, by publishing

notice of such sale in the following newspapers, to wit, at least one newspaper published in the Village of Fenton, and also in the Detroit Free Press and Detroit Evening News, newspapers published in the City of Detroit, in the State of Michigan. It is further ordered that said F. Alexander Beard, such receiver, shall within five days after such sale report the same to this court, and that upon confirmation of such sale by this court, said receiver shall make, execute and deliver to the purchaser or purchasers of all and singular the property, rights, credits and assets of said Fenton Light & Power Company, sufficient deeds and other evidences of conveyance and transfer of said property, rights, credits and assets to such purchasers, and shall thereupon deliver to the register of this court a duly certified check for the amount bid at such sale, drawn on a state or federal bank doing business in the State of Michigan, such certified check to be held by the register of this court until the final order and decree herein for distribution according to the terms of such final decree.

Seldon S. Miner, Circuit Judge.

Countersigned: ———, Register in Chancery.

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## **Form No. 129**

### **Order of Court to Sell Personal Property**

A B, Plaintiff,  
v.  
———, Defendant.

#### *Order Directing Sale of Personal Property at Public Sale*

The application of the receiver for an order to sell personalty coming on for hearing, it is ordered that the receiver offer the personal property then on hand for public sale at the same time and place that he offers the real estate for sale under prior order of this court.



**Form No. 130****Advertisement of Receiver's Sale—Real Estate and Personalty***Receiver's Sale—The Zapf Wagon & Lumber Company,  
North Bend, Ohio*

Pursuant to an order of the Court of Common Pleas of Hamilton County, Ohio, to me directed, in case No. 146490, I will offer at public auction sale, on the premises, at eight o'clock a. m., Tuesday, April 4, 1911, the following described real estate:

All the following lot of land known and numbered as Lot No. 4 of a subdivision of ground made by Frank M. Steele, known as Frank M. Steele's Subdivision of North Bend, in Hamilton County, Ohio, said Lot No. 4 being sixty (60) feet in front on the west side of Miami Avenue by a depth of one hundred feet.

Also, the following described real estate, to wit: In Miami Township, Section No. 20, Fractional Range 2, Miami Purchase, Hamilton County, Ohio, and more particularly described as being all that part of Lots Nos. 40, 41 and 42 which lies north of Cincinnati Avenue in Woodruff's Subdivision of North Bend, Ohio.

Also, the following described real estate situated in North Bend, Hamilton County, Ohio, to wit: Being in the Subdivision of Edward Woodruff of the Village of North Bend, in Section 20, Town 1, Fractional Range 2, Miami Purchase, as the same is recorded in Plat Book No. 3, pages 216 and 217 of the real estate records of said county, and being all of Lot No. 39 of said subdivision, and being 162½ feet front on the north side of Cincinnati Avenue and 174.6 feet west of Symmes Avenue.

The said property to be sold free from the lien of the Southern Ohio Loan & Trust Company.

Appraised at \$2,500; must bring two-thirds.

Terms of sale—cash.

Also: The personal property of the Zapf Wagon & Lumber Company, consisting of power and hand tools, machinery and stock of wagons and lumber.

Appraised at \$1,125.10; must bring two-thirds.

Terms of sale—cash.

Edward O. Brater, Receiver, the Zapf Wagon &  
Lumber Company, North Bend, Ohio.

A B C, Attorney for Receivers.

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### Form No. 131

#### Legal Notice of Receiver's Sale—Real Estate (Another Form)

Notice is hereby given that by virtue of an order of the court of \_\_\_\_\_ County, State of \_\_\_\_\_, made on the \_\_\_\_\_ day of \_\_\_\_\_ in cause No. \_\_\_\_\_ being \_\_\_\_\_, Plaintiff v. \_\_\_\_\_, Defendant, I will offer for sale at public auction on the \_\_\_\_\_ at \_\_\_\_\_ o'clock, on the premises, the following described real estate of \_\_\_\_\_, to wit: \_\_\_\_\_.

Appraised at \_\_\_\_\_.

Terms of sale—cash. No bid of less than two-thirds of the appraised value will be accepted. Sale to be subject to confirmation by the \_\_\_\_\_ Court of \_\_\_\_\_ County, \_\_\_\_\_.

\_\_\_\_\_, Receiver.

\_\_\_\_\_, Attorney for Receiver. Address \_\_\_\_\_.

**Form No. 132****Order Employing Auctioneer**

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON PLEAS.  
No. 146490

Samuel P. Suit, Plaintiff,

v.

The Zapf Wagon & Lumber Company, Defendant.

*Order Employing Auctioneer to Sell Personalty*

This day this cause came on to be heard upon the application of Edward O. Brater, receiver herein, for an order to employ an auctioneer to sell the personalty of the Zapf Wagon & Lumber Company in conformance with the order of sale heretofore made in this cause; and on consideration thereof, the court finds that the employment of an auctioneer will be for the interests of this trust.

It is therefore ordered that Edward O. Brater, receiver herein, employ ——— as auctioneer and be empowered to pay said ——— auctioneer a commission on the sale or sales not to exceed two (2%) per cent. of the amount of the sale.

Edward O. Brater, receiver herein, is also empowered to expend an amount of money not to exceed \$10 to advertise said sale on posters and billboards, this advertising being in addition to the regular legal advertising referred to in said order of sale.

**Form No. 133****Receiver's Report of Sale of Real Estate**

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON PLEAS.

No. 146490

Samuel P. Suit, Plaintiff,

v.

The Zapf Wagon &amp; Lumber Company, Defendant.

*Receiver's Report of Sale of Real Estate*

In obedience to the orders of this court, made and entered on May '25, 1912, ordering and directing me as receiver of the Zapf Wagon & Lumber Company to proceed to advertise the said real estate and other property of the Zapf Wagon & Lumber Company described and enumerated in said order of sale and in the second appraisalment filed in this cause, by publication in a newspaper of general circulation in Hamilton County, Ohio, once a week for four consecutive weeks, commencing on Saturday, May 25, 1912, and to then proceed to sell the same at public auction on the premises in North Bend, Hamilton County, Ohio, on June 25, 1912, at eight o'clock a. m., at not less than two-thirds of the appraised value thereof, and for cash, and in the manner in said order directed I caused to be advertised for sale in the Cincinnati Post, a newspaper printed and of general circulation in Hamilton County, Ohio, on the dates in said order directed, said real estate in said order described and enumerated to be by me as said receiver sold at public auction on the premises of the Zapf Wagon & Lumber Company, North Bend, Hamilton County, Ohio, on June 25, 1912, at eight o'clock a. m., of said day, and did, on said June 25, 1912, at eight o'clock a. m., on the premises of the Zapf Wagon & Lumber Company in North Bend, Hamilton County, Ohio, proceed to offer at public sale said real estate as ordered and directed by said court, the following described real estate:

All the following lot of land known and numbered as Lot No. 4 of a subdivision of ground made by Frank M. Steele,

known as Frank M. Steele's Subdivision of North Bend, in Hamilton County, Ohio, said Lot No. 4 being sixty feet in front on the west side of Miami Avenue by a depth of one hundred feet, as will more fully appear from the plat as recorded in Plat Book No. 8-2, page 20, of the records of Hamilton County, Ohio, being the same premises conveyed to the Zapf Wagon & Lumber Company by John Zapf et al., by deed recorded in Deed Book 963, page 588, of the Hamilton County, Ohio, records.

And then and there came August Kraus, who bid for the same the sum of one hundred and eighty-five (\$185) dollars, the said sum being more than two-thirds of the appraised value thereof and the highest bid made therefor. No further bid being made, I declared said bid accepted and then and there publicly sold and struck off said real estate and other property specifically described and enumerated above to the said August Kraus at his said bid therefor, and declared the same sold to him subject to being confirmed by this court, and I now make return of my said proceedings under said order and sale made by me thereunder to this court for confirmation.

I did also proceed to offer at public sale the following described real estate:

Situated in North Bend, Hamilton County, Ohio, to wit: Being in the subdivision of Edward Woodruff of the Village of North Bend, in Section 20, Town 1, Fractional Range 2 of the Miami Purchase, as the same is recorded in Plat Book No. 3, pages 216 and 217, of the real estate records of said county, and being all of Lot No. 39 of said subdivision, and being 162½ feet front on the north side of Cincinnati Avenue by 174.6 feet west of Symmes Avenue, and being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel P. Suit and Walter S. Suit by deed recorded in Deed Book 967, page 234, of the Hamilton County, Ohio, records.

And then and there came the Southern Ohio Loan & Trust Company, defendant in this cause, who bid for the same the

sum of five hundred (\$500) dollars, the said sum being two-thirds of the appraised value thereof and the highest bid made therefor. No further bid being made, I declared said bid accepted and then and there publicly sold and struck off said real estate specifically described and enumerated above to the said the Southern Ohio Loan & Trust Company at its said bid therefor, and declared the same sold to said company subject to being confirmed by this court, and I now make return of my proceedings under said order and sale made by me thereunder to this court for confirmation.

I did also proceed to offer at public sale the following described real estate:

In Miami Township, Section No. 20, Fractional Range 2, of the Miami Purchase, Hamilton County, Ohio, and more particularly described as being all that part of Lots Nos. 40, 41 and 42 which lies north of Cincinnati Avenue in Woodruff's Subdivision of North Bend, Ohio, as shown on Plat Book No. 3, pages 216 and 217 of the records of Hamilton County, Ohio; being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel P. Suit and Walter S. Suit, by deed recorded in Deed Book 967, page 234, of the Hamilton County, Ohio, records.

And then and there came Hannah Sullivan and Edward T. Sullivan, who bid for the same the sum of one hundred and eighty-two and 66/100 (\$182.66) dollars, the said sum being two-thirds of the appraised value thereof and the highest bid made therefor. No further bid being made, I declared said bid accepted and then and there publicly sold and struck off said real estate specifically described and enumerated above to the said Hannah Sullivan and Edward T. Sullivan at their said bid therefor, and declared the same sold to them subject to being confirmed by this court, and I now make return of my proceedings under said order and sale made by me thereunder to this court for confirmation.

———, Receiver of the Zapf Wagon & Lumber Company.

**Form No. 134****Receiver's Report of Sale of Real Estate (Another Form)**

A B, Plaintiff,

v.

C D, Defendant.

*Receiver's Report of Sale of Real Estate*

In obedience to the order of this court made on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, directing me as receiver of \_\_\_\_\_, to proceed to advertise the real estate of said company \_\_\_\_\_, described and enumerated in said order of sale, by publication in a newspaper of general circulation in \_\_\_\_\_ County, Ohio, once each week for four consecutive weeks, and to then proceed to sell the same at public auction on the premises on the \_\_\_\_\_ at not less than two-thirds ( $2/3$ ) of the appraised value thereof, and for cash, and in the manner in said order directed, I cause to be advertised for sale in \_\_\_\_\_, a newspaper of general circulation in the \_\_\_\_\_ County once a week for four consecutive weeks, said real estate in said order described, and enumerated to be by me, as said receiver, sold at public auction on the premises on the \_\_\_\_\_ at \_\_\_\_\_ o'clock and bid on said \_\_\_\_\_ proceed to offer at public sale said real estate as ordered and directed by said court to wit:

And then and there came \_\_\_\_\_ who bid for \_\_\_\_\_ as above described the sum of \$\_\_\_\_\_ the said sum being two-thirds ( $2/3$ ) of the appraised value thereof, and the highest bid therefor, no further bid being made, I declared said bid accepted, and then and there publicly sold and struck off said \_\_\_\_\_ described above to the said \_\_\_\_\_ at his bid therefor, subject to be confirmed by this court and the further orders thereof.

\_\_\_\_\_, Receiver.

\_\_\_\_\_, Attorney for Receiver.

**Form No. 135****Entry Confirming Sale of Real Estate**

STATE OF OHIO, HAMILTON COUNTY, COURT OF COMMON PLEAS.  
No. 146490

Samuel P. Suit, Plaintiff,

v.

The Zapf Wagon & Lumber Company, Defendant.

***Entry Confirming Sale of Real Estate***

This day this cause came on to be heard upon the report of Edward O. Brater, receiver of the Zapf Wagon & Lumber Company herein, of the sale made by him on June 25, 1912, at eight o'clock a. m., on the premises of the Zapf Wagon & Lumber Company in North Bend, Hamilton County, Ohio, at which he, as said receiver, publicly sold, in pursuance of an order of this court made and entered on May 25, 1912, that part of said real estate belonging to the Zapf Wagon & Lumber Company ordered by this court in said order to be offered for sale, and described as follows:

All the following lot of land known and numbered as Lot No. 4 of a subdivision of ground made by Frank M. Steele, known as Frank M. Steele's Subdivision of North Bend, in Hamilton County, Ohio, said Lot No. 4 being sixty feet in front on the west side of Miami Avenue by a depth of one hundred feet, as will more fully appear from the plat as recorded in Plat Book No. 8-2, page 20, of the records of Hamilton County, Ohio, being the same premises conveyed to the Zapf Wagon & Lumber Company by John Zapf et al. by deed recorded in Deed Book 963, page 588, of the Hamilton County, Ohio, records.

to August Krause, who bid for the same the sum of \$185, which was more than two-thirds of the appraised value of said real estate.

Also the following described real estate:

Situated in North Bend, Hamilton County, Ohio, to wit: Being in the subdivision of Edward Woodruff of the Village of North Bend, in Section 20, Town 1, Fractional Range 2



of the Miami Purchase, as the same is recorded in Plat Book No. 3, pages 216 and 217, of the real estate records of said county, and being all of Lot No. 39 of said subdivision, and being 162½ feet front on the north side of Cincinnati Avenue by 174.6 feet west of Symmes Avenue, and being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel P. Suit and Walter S. Suit by deed recorded in Deed Book 967, page 234, of the Hamilton County, Ohio, records—to the Southern Ohio Loan & Trust Company, who bid for the same the sum of \$500, which was two-thirds of the appraised value of said real estate.

Also the following described real estate:

In Miami Township, Section No. 20, Fractional Range 2, of the Miami Purchase, Hamilton County, Ohio, and more particularly described as being all that part of Lots Nos. 40, 41 and 42 which lies north of Cincinnati Avenue in Woodruff's Subdivision of North Bend, Ohio, as shown on Plat Book No. 3, pages 216 and 217 of the records of Hamilton County, Ohio; being the same premises conveyed to the Zapf Wagon & Lumber Company by Samuel P. Suit and Walter S. Suit, by deed recorded in Deed Book 967, page 234, of the Hamilton County, Ohio, records—to Hannah Sullivan and Edward T. Sullivan, who bid for the same the sum of \$182.66, which was two-thirds of the appraised value of said real estate.

And on motion of said receiver to confirm the same, the court having carefully examined said report and being satisfied that said sale has in all respects been made in conformance to law and said orders of this court, it is ordered by the court that the same be, and it is hereby approved and confirmed, and said receiver is hereby ordered, upon receipt by him of the purchase money from said August Kraus and said Hannah Sullivan and Edward T. Sullivan, to convey said respective parcels of real estate to said respective purchasers and also, upon cancellation of the claims and mortgage lien set up by the Southern Ohio Loan & Trust Company, defendant in this cause, and the payment of said defendant's portion

of the costs of sale in this suit, taxed at \$——, to convey said respective parcel of real estate to the Southern Ohio Loan & Trust Company.

It is further ordered by the court that said receiver hold said funds arising from the sale of said real estate subject to the further orders of this court.

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### Form No. 136

#### Assignment of Bid at Receiver's Sale

The undersigned —— in consideration of one dollar (\$1) and other good and valuable considerations to him paid by ——, does hereby transfer, assign and set over unto —— his bid heretofore made at the public sale herein for the real estate offered for sale at public sale ——, 19—, and the undersigned does hereby assign, transfer and set over unto ——, any and all rights of any kind which he has or may have by virtue of said bid.

Dated at ——, this ——, 19—. \_\_\_\_\_.

**Form No. 137****Receiver's Deed to Real Estate**

Know all men by these presents: That, whereas, on October 24, 1910, Samuel P. Suit as plaintiff filed his certain petition and then and thereby commenced a civil action in the Court of Common Pleas of Hamilton County, Ohio, against the Zapf Wagon & Lumber Company, defendant, numbered on the docket of said court as case No. 146490, praying, among other things for the appointment of a receiver to take charge and control of the real estate and all other property and assets of the said company; and

Whereas, such proceedings were had in said action that, by the consideration and judgment of said court, Edward O. Brater, on October 24, 1910, was appointed receiver of all the debts, property, equitable interests and things in action belonging to said the Zapf Wagon & Lumber Company and ordered to proceed with the discharge of said trust, subject to said order of appointment and the further orders and directions of said court; and

Whereas, I, as receiver, did, on October 24, 1910, give bond and duly qualify as said receiver and take possession of all the real and personal property of said the Zapf Wagon & Lumber Company; and

Whereas, on December 19, 1910, I, as said receiver, filed in said cause an application, petitioning and asking said court for an order to sell the real and personal property of said company and for the appointment of appraisers to appraise the same, and the court, on consideration of said application, found that it would be necessary to sell the real estate and personal property of said company to pay its debts, and appointed appraisers to appraise the same, and ordered me as said receiver to cause said appraisal to be made; and

Whereas, I, as said receiver, in pursuance of said orders caused said real estate and personal property of said company then in my possession to be appraised by said appraisers, and filed my report thereof in said court on May 25, 1912; and

Whereas, on May 25, 1912, said court approved and confirmed said appraisement, and it was ordered, adjudged and decreed by said court that I, as said receiver, proceed to advertise said premises and personal property described and enumerated in said appraisement for sale by publication in a newspaper of general circulation in Hamilton County, Ohio, once a week for four consecutive weeks, commencing on Saturday, May 25, 1912, and that I then proceed to sell the same at public auction on the premises of the Zapf Wagon & Lumber Company, North Bend, Hamilton County, Ohio, on June 25, 1912, at eight o'clock a. m., at not less than two-thirds of the appraised value thereof and for cash; and

Whereas, I as receiver, having advertised the time and place and manner and terms of said sale in the Cincinnati Post, a newspaper of general circulation in said Hamilton County, Ohio, on the dates and in the manner as directed in said order for sale, and having otherwise in all respects complied with said order for sale, I did, on said June 25, 1912, offer for sale, and sold at public auction on the premises of the Zapf Wagon & Lumber Company at North Bend, Hamilton County, Ohio, certain property of said company in said order of sale described and at which sale the premises hereinafter described were by me as said receiver struck off and sold to August Kraus for the sum of one hundred eighty-five (\$185) dollars, said sum being more than two-thirds ( $\frac{2}{3}$ ) of the appraised value thereof and the best offer made therefor, and filed my report of said sale in said court on July 2, 1912; and

Whereas, said court, on July 2, 1912, having examined my said report of said sale and proceedings as receiver, and having found that said sale had been made by me in all respects according to law and the orders of said court, the same was by said court approved and confirmed, and I, as said receiver as aforesaid, was by said court ordered, upon receipt by me of the purchase money of said real estate by me sold to said August Kraus, to convey said real estate to said

purchaser, August Kraus, and to deliver to him possession of said property, all of which will more particularly appear by the records of said court, to which reference is hereby made.

Now, therefore, I, Edward O. Brater, as receiver of said the Zapf Wagon & Lumber Company, by virtue of the powers in me vested by law and of the statutes in such case made and provided, and in consideration of the premises, and in consideration of the sum of one hundred and eighty-five (\$185) dollars, the receipt whereof is hereby acknowledged, and under and by virtue of the orders of said court, do hereby give, grant, bargain, sell and convey unto said August Krause, his heirs and assigns forever, all of the estate, title and interest of the said the Zapf Wagon & Lumber Company in and to the following described real estate situate in North Bend, Hamilton County, Ohio, and described as follows:

All the following lot of land known and numbered as Lot No. 4 of a subdivision of ground made by Frank M. Steele, known as Frank M. Steele's Subdivision of North Bend, in Hamilton County, Ohio, said Lot No. 4 being sixty (60) feet in front on the west side of Miami Avenue by a depth of one hundred (100) feet, as will more fully appear from the plat as recorded in Plat Book No. 8-2, page 20, of the records of Hamilton County, Ohio, being the same premises conveyed to the Zapf Wagon & Lumber Company by John Zapf et al., by deed recorded in Deed Book 963, page 588, of the Hamilton County, Ohio, records.

To have and to hold the same, with all the privileges and appurtenances thereunto belonging, to said August Kraus, his heirs and assigns forever, as fully and completely as I, the said Edward O. Brater, receiver as aforesaid, by virtue of said judgments, orders, rights, order of sale and confirmation thereof, and of the statutes made and provided for such case might or should sell or convey the same.

In witness whereof, I, as receiver of the Zapf Wagon & Lumber Company, as aforesaid, have hereunto set my hand this —— day of ——, 1912.

Signed and acknowledged in the presence of ———.

———, Receiver of the Zapf Wagon & Lumber Company.

State of Ohio, Hamilton County, ss.:

Before me a notary public in and for said county, personally appeared, on the ——— day of ———, 1912, the above named Edward O. Brater, who acknowledged that he had signed the foregoing deed as receiver of the Zapf Wagon & Lumber Company aforesaid, and that the signing of the same is his free act and deed as such receiver for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and official seal.

———, Notary Public, Hamilton County, Ohio.

## FORMS IN BANKRUPTCY RECEIVERSHIPS

### Form No. 138

#### **Petition for Involuntary Bankruptcy—Contracting Company \***

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. IN THE UNITED STATES DISTRICT  
COURT IN AND FOR SAID DISTRICT. No. 4622.  
IN BANKRUPTCY

Pittsburgh Plate Glass Company, a Corporation of Pennsylvania; the Gibson & Perin Company, a Corporation of Ohio; and W. F. Robertson, doing business as W. F. Robertson Steel & Iron Company, Plaintiffs,

v.

The L. P. Hazen Company, a Corporation of Ohio, Defendant.

*To the Honorable Howard C. Hollister, Judge of said Court*

Your petitioners, to wit: Pittsburgh Plate Glass Company, a corporation under the laws of the State of Pennsylvania,

\* Record and Briefs Vol. No. 2525.

the Gibson & Perin Company, a corporation under the laws of the State of Ohio, and W. F. Robertson, doing business as W. F. Robertson Steel & Iron Company, respectfully represent that they are creditors of, and have provable claims which amount in the aggregate, in excess of the value of securities held by them, to more than five hundred (\$500) dollars, against the L. P. Hazen Company, a contracting and building corporation organized under the laws of the State of Ohio, which has, during the six months next preceding the date of this petition had its residence and principal place of business in the City of Cincinnati, County of Hamilton and State of Ohio, within said district; that the said the L. P. Hazen Company owes debts to the amount of over one thousand dollars; that the number of all the creditors of said The L. P. Hazen Company is more than twelve, and that the nature of your petitioners' claims against the said the L. P. Hazen Company is as follows:

1. That the said the L. P. Hazen Company is justly indebted to the Pittsburgh Plate Glass Company on a balance of account for merchandise sold and delivered to the said the L. P. Hazen Company in the sum of four hundred and seven and 59/100 (\$407.59) dollars, which said sum is past due and wholly unpaid and unsatisfied.

2. That the said the L. P. Hazen Company is justly indebted to W. F. Robertson, doing business as W. F. Robertson Steel & Iron Company, on an account for merchandise sold and delivered to the said the L. P. Hazen Company in the sum of three hundred and fifty-nine and 87/100 (\$359.87), which said sum is past due and wholly unpaid and unsatisfied.

3. That on, to wit, August 15, 1910, the said the L. P. Hazen Company executed and delivered to the Gibson & Perin Company its certain promissory note of that date, for the sum of three hundred and eighty-three and 80/100 (\$383.80) dollars, payable thirty days after date thereof. Said note is in words and figures as follows:

\$383.80

Cincinnati, August 15, 1910.

Thirty days after date we promise to pay to the order of the Gibson & Perin Company, three hundred and eighty-three and 80/100 dollars at the Market National Bank.

Value received.

Due September 14.

The L. P. Hazen Company,

By L. P. Hazen.

Countersigned: Perin W. Scarborough, Secretary.

That said note is past due and wholly unpaid and unsatisfied. Your petitioners further represent that within four calendar months next preceding the date of the filing of this petition the said the L. P. Hazen Company has committed an act of bankruptcy within the meaning of the act of the Congress of the United States, entitled "An act to establish a uniform system of bankruptcy throughout the United States," passed July 1, 1898, and the amendments thereto, to wit:

1. That said the L. P. Hazen Company, being insolvent, applied for a receiver for its property in the Court of Insolvency within and for the County of Hamilton, State of Ohio, and that such receiver was by said court appointed. That said application for a receiver was made in the name of Witt & Brown, a copartnership creditor of said the L. P. Hazen Company, upon a petition naming said copartnership as plaintiff, which said petition was prepared, filed and presented to said court of insolvency by Littleford, James, Frost & Foster, theretofore and at the time of the filing and presentation thereof, attorneys for the said the L. P. Hazen Company. That said the L. P. Hazen Company filed no answer and made no defense to said action, and application for a receiver, and consented to said appointment of a receiver of its property, and joined in the application therefor, and that thereupon and immediately upon the filing of said petition such receiver was by said court appointed and William Littleford, a member of the law firm aforesaid and counsel and attorney for the said the L. P. Hazen Company, was by said court named as such receiver with the consent of the said the L. P. Hazen



Company, and proceeded under said appointment to take over all the property of the said the L. P. Hazen Company.

2. That being insolvent and because thereof a receiver has been put in charge of the property of the said the L. P. Hazen Company under the laws of the State of Ohio.

Wherefore, your petitioners pray that the said the L. P. Hazen Company may be adjudged by the court to be a bankrupt within the purview of said act, and that its estate may be distributed as provided for by said act and that such further proceedings may be had thereon as the law in such cases prescribes.

Pittsburgh Plate Glass Co., The Gibson & Perin. Co.,  
W. F. Robertson, doing business as W. F. Robertson Steel & Iron Co.

Morse, Tuttle & Harper, Pogue & Pogue,  
Attorneys for Petitioners.

(Duly verified.)

**Form No. 139****Petition for Involuntary Bankruptcy—Manufacturing Company**

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION. IN BANKRUPTCY. No. 4796

In the Matter of the Petition of Randolph-Clowes Company, Sundh Electric Company and the Mercantile National Bank of the City of New York, that the Platt Iron Works Company, a corporation organized and existing under the laws of the State of Ohio, be declared an involuntary bankrupt.

*To the Honorable the Judges of the United States District Court for the Southern District of Ohio, Western Division:*

The petition of the Randolph-Clowes Company, a corporation organized and existing under and by virtue of the laws of the State of Connecticut, with offices at Waterbury, Conn.; Sundh Electric Company, a corporation organized and existing under and by virtue of the laws of the State of New York, and the Mercantile National Bank of the City of New York, a corporation organized under the National Bank Act of the United States of America, and having its principal place of business at No. 195 Broadway in the Borough of Manhattan in the City, County and State of New York, respectfully shows that the Platt Iron Works Company, the corporation above named, is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, and that at all the times herein mentioned it was and still is engaged principally in a manufacturing, trading and mercantile pursuit, being a manufacturer of pumps, water wheels, compressors, heating apparatus, oil mill machinery and other machinery and products; that said corporation, for the greater portion of the six months next preceding the date of the filing of this petition, had and now has its principal place of business at Dayton, Ohio, in the Southern District of Ohio, Western Division.

That said corporation has unsecured debts to an amount in excess of \$1,300,000; that your petitioners are creditors of said the Platt Iron Works Company, having provable claims amounting in the aggregate in excess of securities held by them in the sum of more than \$1,000, as follows:

Randolph-Clowes Company, goods sold and delivered..	\$ 1,986.13
Sundh Electric Company goods sold and delivered..	362.75
Mercantile National Bank of the City of New York, demand note of the Platt Iron Works Company, dated August 16, 1910, in the sum of.....	75,000.00

with interest from date, payable to bearer; and demand note of the Platt Iron Works Company, dated September 18, 1910, for \$75,000, with interest from date, payable to bearer.

That no security has been received by any of said creditors; that all of said claims are payable and overdue, and no part thereof has been paid, although duly demanded.

That none of your petitioners is entitled to priority of payment on said claims within the meaning of section 64-b of the Bankruptcy Act of 1898, as amended, nor has any of your petitioners received a priority within the meaning of section 60-a-b of such law as amended, and your petitioners further represent that said the Platt Iron Works Company is insolvent, and that its assets are insufficient to pay its debts, and that within four months next preceding the date of this petition the said the Platt Iron Works Company committed an act of bankruptcy in that it did heretofore and on or about April 5, 1911, while insolvent, transfer a portion of its property to one of its creditors with intent to prefer such creditor over its other creditors, in that on said date it paid to the Hickman-Williams & Company the sum of \$2,500, with intent to prefer the said Hickman-Williams & Company over its other creditors; and that within four months next preceding the date of this petition the said the Platt Iron Works Company committed an act of bankruptcy in that it did heretofore, and on or about April 11, 1911, while insolvent, trans-

fer a portion of its property to one of its creditors, with intent to prefer such creditor over its other creditors, in that on said date it paid to the Miami Veneer Lumber Company the sum of \$400, with intent to prefer the said Miami Veneer Lumber Company over its other creditors.

Wherefore, your petitioners pray that service of this petition with subpoena be made upon said the Platt Iron Works Company, as provided in the act of Congress relating to bankruptcy, and that it may be adjudged by the court to be a bankrupt within the provisions of said act.

Dated at the Borough of Manhattan, in the City, County and State of New York, July 22, 1911.

Randolph-Clowes Company,

By Royall Victor, Attorney in Fact.

Sundh Electric Company,

By Royall Victor, Attorney in Fact.

The Mercantile National Bank of the City of New  
York,

[SEAL]

By Willis G. Nash, President.

Harmon, Goldsmith, Colston & Hoadly, Attorneys for  
Petitioners, St. Paul Building, Cincinnati, Ohio.

(Duly verified.)

**Form No. 140****Adjudication in Bankruptcy \***

UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF OHIO  
IN THE UNITED STATES DISTRICT COURT IN AND FOR SAID DISTRICT,  
WESTERN DIVISION. No. 4796. IN BANKRUPTCY

In the Matter of the Platt Iron Works Company, Bankrupt

At Cincinnati, Ohio, in said district on October 17, A. D. 1911, before the Honorable Howard C. Hollister, judge of said court in bankruptcy, the petition of Randolph-Clowes Company and others that the Platt Iron Works Company be adjudged a bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said the Platt Iron Works Company is hereby declared and adjudged bankrupt accordingly.

Witness the Honorable Howard C. Hollister, judge of the said court, and the seal thereof at Cincinnati, Ohio, in said district, on October 17, A. D. 1911.

[SEAL]

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\* Record and Briefs No. 2549. United States Circuit Court of Appeals for the Sixth Circuit. The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, Appellant, v. J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, as Trustees in Bankruptcy of The Platt Iron Works Company, Appellees.

**Form No. 141****Adjudication in Bankruptcy (Another Form) \***

At Cincinnati, Ohio, in said district, on the —— day of November, A. D. 1910, before the Honorable Howard C. Hollister, judge of said court in bankruptcy, the petition of and the amendments thereto of the Pittsburgh Plate Glass Company, the Gibson & Perin Company and W. F. Robertson that the L. P. Hazen Company be adjudged a bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said the L. P. Hazen Company is hereby declared and adjudged a bankrupt on the ground that the defendant admitted in writing its inability to pay its debts and its willingness to be adjudged a bankrupt on that ground, in accordance with its answer filed on this date; all of the other grounds of bankruptcy presented in the petition and the first and second amendments thereto filed by the petitioners herein not being passed upon or considered by the court, and no evidence with reference thereto being presented to the court, and as to which the court makes no finding or adjudication and does not pass upon the same in any particular.

\* Record and Briefs No. 2525. United States Circuit Court of Appeals for the Sixth Circuit. The Massachusetts Bonding & Insurance Company, a corporation under the laws of the State of Massachusetts, Appellant, v. Frank H. Kemper, Trustee in Bankruptcy of the L. P. Hazen Company, Appellee.

**Form No. 142****Admission and Consent to Be Adjudicated a Bankrupt \***

The Platt Iron Works Company, pursuant to a resolution of its board of directors passed July 25, 1911, a copy whereof certified by the secretary of the meeting, at which same was adopted, under the seal of the company, is hereto attached and filed herewith, hereby admits its inability to pay its debts, and consents to be adjudged a bankrupt on that ground.

The Platt Iron Works Company,

By J. B. Reichmann, President.

Resolved, that the action of the president in executing the admission filed in the District Court of the United States of the inability of this company to pay its debts, and in consenting to the appointment of receivers of its property, be and the same hereby is in all things ratified and confirmed.

Resolved, further, that the president be and he hereby is authorized to execute and file in the bankruptcy cause now pending against this company in the District Court of the United States for the Western Division of the Southern District of Ohio, the admission by this company of its inability to pay its debts and its willingness to be adjudged a bankrupt on that ground.

I, George D. Crabbs, secretary of a special meeting of the board of directors of the Platt Iron Works Company, held at Cincinnati, Ohio, July 25, 1911, do hereby certify that the above and foregoing is a full, true and correct copy of a resolution unanimously adopted by the board of directors of said company at said meeting.

In testimony whereof, I have hereunto set my hand and the seal of said company this 25th day of July, 1911.

[SEAL]

G. D. Crabbs, Secretary of the Meeting.

\* Record and Briefs No. 2549. United States Circuit Court of Appeals for the Sixth Circuit. The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, Appellant, v. J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, as Trustees in Bankruptcy of The Platt Iron Works Company, Appellees.

**Form No. 143****Petition for Order Appointing a Receiver in Bankruptcy \***

*To the Honorable Judges of the United States District Court  
for the Southern District of Ohio, Western Division:*

Your petitioners respectfully show that a petition for the adjudication of the Platt Iron Works Company to be a bankrupt is about to be filed herein simultaneously with the filing of this petition, and that said proceedings can not be determined for some time to come, and that considerable time must elapse before the trustee in bankruptcy can be appointed.

That your petitioners are informed and believe, as appears from the attached affidavit of J. B. Reichmann, that the estate of the said alleged bankrupt consists of real estate, machine shops, foundries, pattern shops and boiler works situated in the City of Dayton, Ohio, in the State of Ohio, in the Southern District of Ohio, Western Division, and a large amount of personal property, worth upwards of \$800,000, including its accounts receivable, manufactured product, material, equipment and supplies at its plant and in course of transit and under consignment in various parts of the United States.

That the company has a large amount of unfilled orders for the sale and delivery of its products and a large amount of machinery, accounts receivable, choses in action and cash on hand, and also the estate of the said the Platt Iron Works Company includes the goodwill of said business developed in the course of upwards of thirty years of operation. The personal property of the said the Platt Iron Works Company, exclusive of goodwill, is upwards of \$800,000, and by far the greater portion of said personal property is situated in the Southern District of Ohio, Western Division, where the said corporation has its principal place of business.

\* Record and Briefs No. 2549. United States Circuit Court of Appeals for the Sixth Circuit. The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, Appellant, v. J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, as Trustees in Bankruptcy of The Platt Iron Works Company, Appellees.



That it is absolutely necessary for the preservation of the said estate that a receiver or receivers be appointed to take charge thereof for the following reasons: The Platt Iron Works Company is conducting a going business and has on hand stock and raw material and supplies and finished and partly finished product and has a large number of orders unfilled. One of the chief assets of the said business is its value as a going concern, and it is for the best interests of the Platt Iron Works Company and its creditors that its business should continue for the reason that as a going concern the goodwill of the Platt Iron Works Company is of great value, and it is also necessary to continue the said business in order to fulfill its said orders and to complete its contracts, or arrange for the completion of certain of its contracts to prevent large claims for damages that would arise by reason of the breach of contracts, and to prevent the business of the corporation being dissipated and the value lost. And in order that the receiver or receivers of the said company may be enabled to continue the operation of said business, it is necessary that they be permitted in their discretion to buy and sell goods, supplies and materials or products for cash or upon credit; that they be authorized to borrow such sum or sums of money necessary for the conduct of the business, and, furthermore, it is necessary that the outstanding accounts, which now aggregate upwards of \$286,000, be collected in due course. Many of the said accounts are for machinery sold under a six months' or longer guaranty, and in the event of a suspension of the business and the inability of purchasers to obtain broken parts and renewals of defective parts, debtors are likely to claim substantial damages by way of counterclaim and to fail or refuse to pay the said indebtedness.

That it is probable that attachment and other proceedings will immediately be brought thereon by creditors here and in other jurisdictions, and that if such proceedings be had, the property of the said alleged bankrupt will be dissipated, which will materially affect or reduce the amount to be ob-

tained from the estate of the Platt Iron Works Company and the dividends to be declared in the future in this proceeding.

No previous application to this or any other court has been made for the order herein asked for.

Wherefore, your petitioners pray that a receiver or receivers be appointed to take charge of and to hold the said estate and to continue said business and collect said accounts, with the usual powers of receivers in like cases, and that an order be granted restraining and enjoining all persons, firms, corporations, sheriffs, marshals and other officers from interfering with the receiver or the property of the alleged bankrupt, or transferring or disposing of the same, either by suit, attachment, garnishment proceedings or otherwise, and ordering and directing said the Platt Iron Works Company and all persons to deliver and convey the property of said the Platt Iron Works Company forthwith to the receiver and for such other and further relief as shall be adjudged lawful.

Randolph-Clowes Company,

By Royall Victor, Attorney in Fact.

Sundh Electric Company,

By Royall Victor, Attorney in Fact.

The Mercantile National Bank of the City of New  
York,

[SEAL] Willis G. Nash, President, Petitioners.

Harmon, Goldsmith, Colston & Hoadly, Attorneys for  
Petitioners.

(Duly verified.)

**Form No. 144****Affidavit in Support of Petition for Receiver in Bankruptcy \***

STATE OF NEW YORK, COUNTY OF NEW YORK, SOUTHERN  
DISTRICT OF NEW YORK

*Affidavit of Joseph B. Reichmann*

Joseph B. Reichmann, being duly sworn, deposes and says: I am, and since May, 1909, have been, the president of the Platt Iron Works Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio, having its principal place of business in the City of Dayton, in the State of Ohio, in the Southern District of Ohio, Western Division, and as such president I am fully informed as to the business and affairs of said the Platt Iron Works Company.

Said the Platt Iron Works Company has an authorized and outstanding issue of capital stock of eight hundred thousand dollars (\$800,000), all of which is of the same class. The corporation has outstanding seven hundred ninety-eight thousand five hundred (798,500) of its first mortgage five per cent. bonds, bearing date November 1, 1904, and due September 1, 1944, with interest payable semi-annually on September 1 and March 1 of each year, secured by a mortgage made by the company to the Cincinnati Trust Company, of Cincinnati, Ohio. Of these bonds three hundred ninety-eight thousand five hundred (398,500) are in the hands of the public; four hundred thousand (400,000) are deposited with the Central Trust Company of New York as security for a loan to the Platt Iron Works Company of three hundred thousand dollars (\$300,000), and fifteen hundred (1,500) are in the treasury of the company.

The corporation has an outstanding, unsecured indebtedness to the amount of approximately one million two hundred

\* Record and Briefs No. 2549. United States Circuit Court of Appeals for the Sixth Circuit. The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, Appellant, v. J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, as Trustees in Bankruptcy of The Platt Iron Works Company, Appellees.

ninety-three thousand (\$1,293,000), and secured indebtedness of upwards of three hundred and fifty thousand dollars (\$350,000), which sum includes the indebtedness to the Central Trust Company above set forth.

The property of the corporation consists largely of its real estate plant and materials at Dayton, Ohio. The company is engaged in the manufacture and selling of pumps of various kinds, pumping engines, oil mill machinery, air compressors, heaters, water-power plants and other hydraulic machinery. The business now owned by this company has been continuously operated by it and its predecessors for upwards of thirty years, and the Platt Iron Works Company and its predecessor companies have, in the course of such business, obtained and the company now owns many patterns, drawings and patents of great value, and has in the course of such business become possessed of goodwill of very great value. The property in the City of Dayton covers twenty-three acres, and the company employs from 700 to 1,000 men. The buildings consist of large foundries, boiler, machine, pattern and other shops, offices and various storehouses and warehouses.

The patterns referred to are of great value, and the company does a business of from fifteen thousand dollars (\$15,000) to thirty thousand dollars (\$30,000) each month in repair parts alone, sold in connection with its output, in the making of which repairs the use of said patterns is essential. The company has now on hand large supplies of iron, copper, brass and other materials, and its raw materials and product finished and in process of manufacture amounted, in cost price of materials and labor, on May 31, 1911, to \$450,826.06. If the said business is discontinued, the goods in process of manufacture will lose at least seventy-five per cent. of their value, and by far the greater part thereof can be used only for scrap.

The property account, as taken from the books of the company as of May 31, 1911, is as follows:

Real estate and buildings.....	\$618,078.92
Machinery and equipment.....	570,201.90
Patterns and drawings.....	645,381.39
Flasks .....	51,389.04
Tools .....	145,463.86

The cash in bank as of May 31 was less than one thousand dollars (\$1,000), and there has been for months past grave doubt about being able to meet each successive payroll and to make up the sight drafts, against bills of lading for material necessary for the continuance of the business. The accounts receivable shown on the company's books as of May 31, 1911, were three hundred and thirty-five thousand five hundred and thirty-three dollars and sixty-two cents (\$335,533.62). Many of these accounts are for machinery and materials sold under a six months' or longer guaranty of the machine or material to do specific work. In the event that the business is stopped, it is almost certain that at least fifty per cent. of these accounts will be collected only by suit and that defense will be interposed. If these accounts are to be collected in due course, the company must be at all times ready to repair or alter machines whose operation is defective during the period that the guaranty covers.

The Platt Iron Works Company has established selling agencies at most of the principal large cities in the United States and some agencies in Europe. This organization for the disposition of goods of the company is effective and of great value. It has been built up by many years of effort and good judgment, and a discontinuance of the activities of the corporation for any length of time will mean a scattering and a breaking up of the selling organization and consequent tremendous loss to the company.

The plant of the Platt Iron Works Company is located in a position that is satisfactory from the competitive standpoint. In the opinion of deponent it has the best situation in this country for the marketing of the particular machines and

products which it handles. Its plant is thoroughly modernized, and is equal to any plant in the United States, and with slight changes can readily be made the most modern plant of its kind in the world. The Platt Iron Works Company has, through a series of years, developed a body of eager and competent salesmen and a trained organization and working force, as well as a group of specially trained engineers. The company can not discontinue its activities without seriously injuring this organization and seriously impairing or destroying the value of the goodwill of the company.

The business is now being done under better conditions than during the last few years and is now operating at a profit. Its overhead charges have been substantially reduced, and the output increased, and the company had on hand May 31, 1911, three hundred and ninety-six thousand six hundred and ninety-nine dollars and thirty-seven cents (\$396,699.37) of unfilled orders, which can be filled at a substantial profit.

As indicative of the business of the company, it may be stated that the annual payroll is from five hundred thousand dollars (\$500,000) to six hundred thousand dollars (\$600,000).

In the opinion of deponent the goodwill of the Platt Iron Works Company is extremely valuable, and a discontinuance of the activities of the company would be a serious injury to creditors and the community in which the company has its plant. I believe that the company can be operated at a substantial profit by a receiver. It will be necessary, in the existing financial condition of the company, to have money to meet the requirements of the immediate future; not, however, to exceed seventy-five thousand dollars (\$75,000).

I believe that it would be to the large advantage of the creditors to continue and eventually sell the business, as there would thus be realized far more than if the business were permitted to stop, with the consequent injury resulting from the disintegration of the business, the loss of goodwill, the

loss of trained employes and the breaking up of the valuable business organization, which is the outgrowth of years of experience and effort.

(Duly verified.)

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### Form No. 145

#### Consent of Alleged Bankrupt to Appointment of Receiver \*

The Platt Iron Works Company, the alleged bankrupt above named, hereby admits its inability to pay its debts and consents to the appointment of a receiver or receivers in this proceeding and to the entry of an order herein appointing such receiver or receivers, with power to continue the business and to borrow money therefor.

The Platt Iron Works Company,

[SEAL]

By J. B. Reichmann, President.

(Duly verified.)

Dated July 21, 1911.

\* Record and Briefs No. 2549. United States Circuit Court of Appeals for the Sixth Circuit. The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, Appellant, v. J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, as Trustees in Bankruptcy of The Platt Iron Works Company, Appellees.

**Form No. 146****Order Appointing Receiver in Bankruptcy—Contracting Company \***

(Entered by Judge Hollister November 28, 1910)

In the Matter of the Petition of Pittsburg Plate Glass Company and others to have the L. P. Hazen Company declared bankrupt.

*Order Appointing a Receiver in Bankruptcy*

This cause coming on to be heard upon the petition of the Pittsburgh Plate Glass Company, the Gibson & Perin Company and W. F. Robertson, creditors, to have a receiver appointed for said alleged bankrupt, the L. P. Hazen Company, and due notice having been served of this application, and it appearing to the court that it is absolutely necessary for the preservation of the estate of said alleged bankrupt that a receiver be forthwith appointed, to take charge of, hold, manage and conduct the estate, property and assets of said alleged bankrupt;

It is therefore ordered, adjudged and decreed that Frank H. Kemper be and he is hereby appointed receiver of all assets and property of every kind and character of and belonging to the said the L. P. Hazen Company, and said receiver is hereby clothed with all the power and authority of receiver in bankruptcy in like cases.

It is further ordered that said receiver, within three days from this date, file a bond as such receiver in the usual form, in the penal sum of \$50,000, with surety to be approved by the clerk of this court.

And said receiver is hereby authorized and directed to employ any and all necessary help in the administration of his trust, therefore personally came the said Frank H. Kemper and qualified as such receiver.

\* Record and Briefs No. 2525. United States Circuit Court of Appeals for the Sixth Circuit. The Massachusetts Bonding & Insurance Company, a corporation under the laws of the State of Massachusetts, Appellant, v. Frank H. Kemper, Trustee in Bankruptcy of the L. P. Hazen Company, Appellee.



**Form No. 147****Order Appointing Receiver in Bankruptcy—Manufacturing Company\***

Whereas, a petition for adjudication in bankruptcy was on July 24, 1911, filed against the Platt Iron Works Company, a corporation organized and existing under and by virtue of the laws of the State of Ohio, having its principal place of business in the City of Dayton, Ohio, in said district; and

Whereas, it satisfactorily appears that it is absolutely necessary for the preservation of the estate of the said alleged bankrupt that receivers be appointed to take charge of and to hold said estate and to conduct the business of said alleged bankrupt; and

Whereas, it satisfactorily appears that an order should be granted, restraining and enjoining all persons, firms, marshals, sheriffs and other officers from interfering with the receivers or the property of the alleged bankrupt, either by suit, attachment, garnishment proceedings or otherwise, or from transferring or disposing of the same, and ordering and directing said the Platt Iron Works Company and all persons to deliver said property forthwith to the receivers;

It is ordered that George R. Young and Dixon Boardman be and they hereby are appointed receivers of this court of the said the Platt Iron Works Company and of all property and estate of alleged bankrupt, real, personal and mixed, of whatever kind and description, and wherever situated.

That said receivers be and they hereby are fully authorized, empowered and directed to take immediate possession of all and singular the property of the said the Platt Iron Works Company, wherever situated or found, and in their discretion to continue, in whole or in part, the business of said the Platt Iron Works Company in the same manner as the same has

\* Record and Briefs No. 2549. United States Circuit Court of Appeals for the Sixth Circuit. The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, Appellant, v. J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, as Trustees in Bankruptcy of The Platt Iron Works Company, Appellees.

heretofore been conducted or in such other manner and to such extent or in such places as they may deem proper, and to preserve and protect the said property, and to protect the title and possession of the same and secure and develop the business of the same, and in their discretion to employ and discharge and fix the compensation of all such officers, managers, superintendents, agents, persons, employes as shall be necessary to aid them in the proper discharge of their duties, and to make such payments and disbursements as may be needful and proper in so doing, with full power to purchase for cash materials and supplies as may be needed in the conduct of the business, including the operation of the plants, in whole or in part; to contract or defray any and all expenses in the conduct of the business, to borrow money for the purpose of carrying on the business, upon such terms as they may deem proper, to an amount not to exceed seventy-five thousand dollars (\$75,000), and to sell for cash or upon credit the goods and chattels of said business, and to fulfill any orders and carry out any contracts of the said the Platt Iron Works Company, and with full power to do such other things as may be necessary to the proper continuation and running of said business or any part thereof for not to exceed thirty (30) days, with leave to apply to continue the business for a longer time if necessary;

It is further ordered that each of said receivers file a bond in the sum of \$75,000, with sufficient sureties, to be approved by this court, conditioned that they will well and truly perform the duties of their office and account for all moneys and property that may come into their hands and abide by and perform all things which they shall be directed to do by this court.

It is further ordered that the said the Platt Iron Works Company and each and every of its officers, directors, agents and employes, and all other persons, firms, corporations, creditors, marshals, sheriffs and other officers having possession of said property, be and they hereby are required and com-

manded forthwith to transfer and deliver to the said receivers or their duly authorized representative or representatives, any and all books of account, vouchers, papers, deeds, leases, contracts, bills, notes, accounts, moneys, certificates of stock, equipment, tools, machinery, assets or other property of any kind in his or their hands or in his or their control, of which the receivers are hereby appointed.

It is further ordered that the Platt Iron Works Company and the officers, directors, agents and employes thereof and all persons claiming to act by, through or under said corporation, and all other persons, firms, corporations, creditors, marshals, sheriffs and other officers whatsoever, are hereby enjoined and restrained from interfering in any manner with the property or estate of the said alleged bankrupt over which said receivers are hereby appointed, or with the receivers' possession thereof, and from in any manner or by any means interfering with the sale or disposition of the same or any part thereof or interfering in any way to prevent the discharge of the duties of such receivers, and that all persons, firms, corporations, creditors, marshals, sheriffs and other officers be restrained from prosecuting, exacting or suing out any summons, suit, attachment, replication or other writ or process for the purpose of taking possession, impounding or interfering with said property or estate or any part thereof, or from molesting, disturbing or interfering with the receivers' acquisition of possession or possession of the same.

And it is further ordered that said receivers be and they hereby are authorized in their discretion to execute a certificate or certificates of indebtedness as receivers herein to the persons, firms or corporations from which they may borrow moneys, which certificates shall not take precedence over the bonds.

And it is further ordered that should the said the Platt Iron Works Company be adjudicated a bankrupt, said receivers continue as such, with the powers herein conferred until the

appointment and qualification of a trustee for said bankrupt or the further order of this court.

Witness, Honorable Howard C. Hollister, a judge of said court and the seal thereof at the City of Cincinnati in said district on July 24, 1911.

Howard C. Hollister, United States District Judge.

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## Form No. 148

### Order Appointing Receiver in Bankruptcy—Dairy

THE UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF  
OHIO, WESTERN DIVISION

At a stated term of the District Court of the United States, within and for the Western Division of the Southern District of Ohio, begun and held at the City of Cincinnati, in said district, on the first Tuesday in April, being the second day of said month, in the year of our Lord one thousand nine hundred and twelve, and of the Independence of the United States of America the one hundred and thirty-sixth, to wit:

On Monday, April 22, A. D. 1912. Present: the Honorable then and there had were the following, to wit: In the Matter of Henry Menke, Bankrupt.

#### *Order Appointing Receiver. No. 4916*

In the Matter of the Petition of Joseph Krimmer et al. to  
Have Henry Menke Declared Bankrupt

This cause coming on to be heard upon the motion of said Joseph Krimmer et al., creditors, to have a receiver appointed for said bankrupt, Henry Menke, and due notice having been served of this application, and it appearing to the court that it is absolutely necessary for the preservation of the estate of said bankrupt that a receiver be forthwith appointed to take charge of, hold, manage and conduct the estate, property and assets of said bankrupt;

It is therefore ordered, adjudged and decreed that Ralph E. Clark be and he is hereby appointed receiver of all the assets and property of every kind and character of and belonging to the said Henry Menke, and said receiver is hereby clothed with all the power and authority of receivers in bankruptcy in like cases.

It is further ordered that said receiver, within three days from this date, file a bond as such receiver in the usual form in the penal sum of five thousand (\$5,000) dollars, with surety to be approved by the clerk of this court.

It is further ordered that said receiver cause at once an inventory and appraisement of the assets of said bankrupt, and he hereby is authorized and directed to collect and hold all the rents, profits, accounts and bills receivable, due or to become due said bankrupt's estate, and to do all things necessary to protect the perishable and other property and assets of said bankrupt.

And therefore personally came the said Ralph E. Clark and qualified as such receiver.

It is further ordered that J. E. Rappeport, receiver in the state court, turn over to the receiver herein appointed all property of the bankrupt in his possession.

The United States of America, Southern District of Ohio,  
Western Division, ss.:

I, B. E. Dilley, clerk of the District Court of the United States, within and for the district and division aforesaid, do hereby certify that the foregoing is a correct copy of the original order appointing Ralph E. Clark receiver, as the same appears on file and of record in the clerk's office of said court in the therein entitled cause.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, at the City of Cincinnati, Ohio, this 22d day of April, 1912.

[SEAL]

B. E. Dilley, Clerk.

By Wm. F. Madden, Deputy.

**Form No. 149****Report of Receiver in Bankruptcy**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt

*Report of Ralph E. Clark, Receiver*

To the Hon. Howard C. Hollister, District Judge:

On April 22, 1912, on petition of Joseph Krimmer et al., I was duly appointed receiver of Henry Menke. On April 23, in accordance with said appointment, I duly qualified as such receiver and gave bond with the American Bonding Company, of Baltimore, as surety.

I at once secured from J. E. Rappoport (who was appointed receiver of Henry Menke by order of the Insolvency Court of Hamilton County on December 16, 1911) the accounts and papers in his possession pertaining to Henry Menke, also a balance of money in the Fifth-Third National Bank amounting to sixty-six (66) cents, and a balance of cash amounting to thirty-four (34) cents.

Thereupon, I went to the premises of Henry Menke, 2007, 2009 Mohawk Place, and 295, 297 West McMicken Avenue, Cincinnati, and took possession of the estate, property and assets of Henry Menke there located; the property consisting of store and dwelling located at 2009 Mohawk Place, wagon shed and creamery at 2007 Mohawk Place, frame building at 295 West McMicken Avenue, frame building at 297 West McMicken Avenue; also complete dairy plant and six horses, all of which are more particularly described in the inventory hereto attached and marked "Exhibit A."

I ascertained that, on April 9, said J. E. Rappoport, state receiver, had discontinued the business of Henry Menke, dairyman, had sold the goodwill to one Edward E. Ridder, of Cincinnati, Ohio, and had also rented the milk depot at 2007 and 2009 Mohawk Place and the use of the horses, wagons,

etc., to said Edward E. Ridder for a monthly rental of \$150, a copy of which contract is hereto attached and marked "Exhibit B."

The milk depot, machinery and other property was being reasonably taken care of under this contract; the horses were and are being fed and reasonably taken care of. I therefore instructed Edward E. Ridder to continue under the contract with J. E. Rappoport, but with the understanding that it was to be discontinued upon my request or order of the court, or order of the trustee of Henry Menke when such trustee was duly elected.

I further found that J. E. Rappoport had made a contract with Edward E. Ridder to collect the outstanding milk accounts under the following considerations: That, for making said collections, Edward E. Ridder was to deduct from the first half month's rent, due and payable April 25, \$16.50, being salary due April 9 to drivers employed by J. E. Rappoport, receiver, also five additional days' salary subsequent to April 9, amounting to \$41.50, being \$58 deducted from the first half month's rent of \$75. The outstanding milk accounts were said to amount to between \$300 and \$400. I took measures to ascertain the exact amounts and names of the debtors, and have had a list of these accounts made part of "Exhibit A" attached to this report.

The upstairs portion of 2009 Mohawk Place is rented to Bernard Menke at \$9 per month. He has a claim for salary due from J. E. Rappoport, receiver, to offset the rent, and an adjustment must be made of this matter. Theodore Menke also rents a portion of the same premises at \$13 per month; 297 West McMicken Avenue was rented by J. E. Rappoport, receiver, to Henry Menke at \$20 per month. Henry Menke has since left, and I have rented the premises to two different tenants, John Quall, \$10 per month, beginning May 10, and Philip Schreiber, \$10 per month, beginning May 8.

On April 30 I made a trip to Butler, Ky., and took possession of the creamery there located, in which Henry Menke

has an interest. The creamery is more particularly described in the inventory hereto attached and marked "Exhibit A." The building was erected and paid for by Henry Menke about two years ago on property belonging to one A. J. Grant, of Butler, Ky., and the contract entered into with said Grant provided for the payment of \$50 per year rental from Henry Menke, the first \$50 payable March 23, 1911, and each succeeding payment due on March 23 of each and every year thereafter. It was further agreed that, should Henry Menke default in the payment of the stipulated \$50 per year for sixty (60) days after the same was due, then and in that event the said A. J. Grant was to re-enter and take possession of the said building without notice. I ascertained that the \$50 due and payable March 23, 1912, had not yet been paid. The building and machinery located therein is of some value—said to have cost \$2,800. I endeavored to have A. J. Grant grant an extension of time to pay the \$50 due March 23, 1912, and still unpaid. He refused, and upon order of Referee C. T. Greve, I paid said Grant, on April 22, 1912, \$50 rent, thereby preserving the equity in the premises for the creditors.

Immediately after giving bond as receiver of Henry Menke I at once proceeded to ascertain the insurance on the property belonging to Henry Menke. I found outstanding policies on the real estate as follows:

No. 25138—Northwestern National of Milwaukee, Wis...	3,500
On 2009 Mohawk Place, store and dwelling.	3,500
On 2007 Mohawk Place, wagon shed and	
creamery .....	1,500
No. 44260—Phoenix of Hartford, Conn.	
On 295 West McMicken Avenue.....	1,000
On 297 West McMicken Avenue.....	1,000

These policies were in the name of Henry Menke and had never been transferred to J. E. Rappoport, receiver. They were also in the possession of the Cleveland Building Associa-



tion Company, 1202 Sycamore Street, which holds a mortgage on the real estate located at Mohawk Place and West McMicken Avenue for \$6,603.23. I at once had these policies transferred to my name as receiver of Henry Menke, with a clause showing the interest of the building association, and left them in the possession of the building association.

I further found that there were two policies in the name of J. E. Rappoport, receiver, covering the personal property of Henry Menke, located at Mohawk Place and West McMicken Avenue. One of these policies, No. 55714, was in the Aetna, and the other, No. 17087, in the Continental, amounting in all to \$5,000. These companies refused to continue the insurance. I thereupon took out three new policies from Albert W. Schell & Co., agent, as follows:

No. 305295—Commercial Union, new creamery building .....	\$ 800
No. 9542991—Phoenix Assurance Co. of London, personal property .....	1,650
No. 107645—Hartford Fire Insurance Co., personal property .....	2,000

The horses above described were the only perishable property in my possession. It seemed unnecessary to sell the same immediately, because they were being reasonably well taken care of and bringing in a revenue for the bankrupt's estate.

My account of receipts and expenditures is as follows:

#### RECEIPTS

1912

April 23—J. E. Rappoport, receiver.....	\$ 1.00
Edward Ridder, collection of accounts.....	165.23
Edward Ridder, per contract.....	167.00
Theo. Menke, rent.....	15.00
	<hr/>
	\$348.23

## EXPENDITURES

1912

May	21—A. J. Grant, rent, Butler, Ky., property....	\$ 55.00
	24—State of Ohio, inspection of boiler.....	5.50
June	7—Balance on hand.....	292.73
		<hr/>
		\$348.23

## EXHIBIT A

NOTE—The values given in this inventory are those shown in the Schedule of Assets and Liabilities. No appraisers were appointed by the court and therefore no official appraisal made.

## REAL ESTATE

2007 Mohawk Place, Cin'ti, O.; 2009 Mohawk Place, Cin'ti, O.; 295 W. McMicken Av., Cin'ti, O.; 297 W. McMicken Av., Cin'ti, O. Mortgage—Cleveland Building Association Co., \$6,603.23 Value.....	\$14,300.00
295 W. McMicken Av., Cin'ti, O.; 297 W. McMicken Av., Cin'ti, O. Mortgage—Jos. Rehkamp, \$1,000.00.	
Creamery at Butler, Ky. Leasehold. Value.....	\$ 1,800.00
	<hr/>
	\$16,100.00

## PERSONAL PROPERTY

A. Cash on hand, 34 cents cash, 64 cents deposit Fifth-Third National Bank in hands of J. E. Rappoport, Receiver, 4/22/12.....	\$	1.00
C. Stock in trade in my business at 2009 Mo- hawk Place:		
40 Lippincott jelly .....	\$	2.00
24 Shoepeg corn .....		1.20
29 Neptune sardines .....		1.50
3 Campbell's beans .....		.15

2	Karo corn syrup.....	\$	.10	
8	Salad oil .....		.40	
9	Durkee's salad dressing.....		.45	
7	5c Royal baking powder.....		.35	
30	White Cap baking powder.....		1.50	
5	Harrison's buckwheat .....		.25	
6	Aunt Jemima's pancake flour....		.30	
9	Hamburger steak .....		.45	
4	Libby's chile con carne.....		.20	
5	Salmon, canned .....		.25	
4	Cans peaches .....		.20	
4	Cans peas .....		.20	
3	Cases Scourall .....		3.00	
21	Tin boxes Mason's shoe blacking..		1.10	
5	Tin boxes T. M. shoe blacking....		.25	
1	Pack paper bags.....		.25	
16	Rolls wrapping paper.....		.80	
1	Half-barrel salt in bags.....		2.00	
1	Empty barrel .....		.20	
2-3	Crock apple butter.....		.75	
1	Case Saners flavors.....		7.50	
2	Boxes National Baking Co. Gem			
	oysters, Princess sodas.....	.30	\$	25.65
				<hr/>
				\$ 26.65
F. 6	Horses at \$90.....	\$		540.00
G. 7	Milk wagons at 75.....	\$525.00		
1	Wholesale wagon .....	50.00		
1	Surrey .....	25.00		
4	Sets harness .....	100.00	\$	700.00
				<hr/>
K.	Machinery, fixtures, apparatus and tools used in business, located at 2007, 2009 Mohawk Place and 195, 197 West McMicken Ave., Cincinnati, Ohio:			

New Pasteurizer and cooler.....	\$350.00	
Old Pasteurizer and cooler.....	50.00	
Washing machine .....	300.00	
Bottle filler and capper.....	250.00	
2 Milk pumps .....	30.00	
2 Milk vats .....	25.00	
Shafting, hangers, belts, pipes.....	50.00	
25 H. P. boiler and stack.....	20.00	
Ice machine .....	200.00	
Engine, 25 H. P.....	100.00	
Ice box, 2 brine tank (built in bldg.)..	300.00	
4 Milk trucks, \$5.....	20.00	
1 Clock .....	.50	
5 Chairs .....	3.00	
1 National cash register.....	100.00	
2 Counters, 1 ice box.....	30.00	
1 Scale .....	40.00	
1 Safe .....	50.00	
3 Desks .....	15.00	
159 Cases quart bottles (6 doz. a case)		
200 Cases pint bottles (12 doz. a case)		
27 Cases ½ pint bottles (12 doz. a case)		
303 Cases 10-oz. buttermilk bottles (12 doz. a case)		
322 Wooden bottle cases, 10-oz. bottles.		
200 Wooden bottle cases, pint bottles.		
27 10-gallon milk cans at \$2 .....	54.00	
20 5-gallon milk cans at \$2 .....	40.00	
15 3-gallon milk cans at \$1 .....	15.00	
45 2-gallon milk cans at 45 cents ..	15.00	
40 1-gallon milk cans at 40 cents ..	8.00	
5 15-gallon milk cans at \$3 .....	15.00	
1 Typewriter .....	45.00	\$ 2,150.50

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M. Creamery machinery at Butler, Ky.:

1 Boiler .....	\$ 30.00
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1 8-H. P. engine.....	\$ 75.00	
1 Churn .....	40.00	
1 Milk tester .....	10.00	
2 Milk vats .....	15.00	
1 Lot butter tubs.....	4.00	
2 Iron milk tanks.....	16.00	
1 Desk .....	4.00	
1 Sink .....	4.00	
Piping .....	5.00	
1 Steam pump .....	50.00	\$ 253.00
		<hr/>
		\$ 3,670.15

## CHOSSES IN ACTION

## A. Debts due petitioner on open account, as follows:

Marks, 620 Findlay.....	\$ .34
Voegele, 409 Oliver.....	1.60
Windisch-Muhlhauser Brewing Co.....	1.20
Rodenbeck, 445 Oliver.....	.36
Risch, S. W. Cor. Wade and John.....	1.36
Miller, 1505 John St.....	.16
Miller, 1505 John St.....	3.98
Katzenberger, 1609 Linn St.....	1.88
Barnes, 1556 Whirter Alley.....	1.40
Betz, 1045 W. Liberty.....	.80
Finsch, 1602 Western Ave.....	1.28
Hilbert, 1074 Willstach St.....	1.00
Weingarter, S. E., Cor. Flint and Dalton.....	.88
Beekhauser, 938 Wade St.....	.77
Thomas, 911 Armory Ave. (moved out of city) ..	.36
Kruse, 1552 Baymiller.....	.64
Masch, 727 Clinton St.....	1.22
Krieger, 521 Clinton St.....	1.80
Wessel, 528 Laurel St.....	.56
Groshein, 1442 Freeman Ave.....	.20
Burns, 954 Betts St.....	4.26
Fischer. 900 Betts St.....	4.00

Schwartz, 1307 Cutter St.....	\$ 4.84
Lamber, 908 Gest St.....	3.04
Teckmeyer, 1063 Rittenhouse.....	1.80
Huber, 552 Armory Ave.....	.90
Goodman, 1513 Jones St. (moved to Chicago)....	.20
Newhouse, 278 Stark St.....	.36
Jones, 1057 John St.....	.08
Bark, 555 Eighth St.....	.36
Ransick, 541 Eighth St.....	.36
Fleck, 721 W. Ninth St.....	.08
Lake, 430 E. Twelfth St.....	1.44
Frommeyer, 430 E. Twelfth St.....	.92
——, 506 E. Twelfth, fourth floor rear.....	.84
Kunz, 518 Dandridge.....	.56
——, 516 E. Thirteenth St., first floor rear....	.92
Mitchell, N. E. Cor. Twelfth and Sycamore.....	.36
——, 223 E. Twelfth St.....	1.04
——, N. E. Cor. Hunt and Pendleton, 2d fl. rear	.44
Magel, 1340 Walnut St.....	.32
Brockman, 1337 Clay St.....	.36
Kistemaker, 1615 Hughes St.....	2.68
O. Niel, 1637 Moore St.....	40
Buchwalter, 1637 Moore St.....	.46
Stock, 1103 Walnut St.....	1.96
——, 1340 Walnut St.....	.14
Lang, 2128 Loth St.....	2.08
Cook, 2219 Loth St.....	.36
——, 2115 Vine St.....	3.20
Schnay, 237 Mohawk St.....	.56
——, 229 Renner St.....	.60
Hooke, McMicken and Vine Sts.....	2.16
Dr. Beames, 290 W. McMicken Ave.....	1.44
Weisenbecker, McMicken Ave.....	1.72
Rissert, 558 W. McMicken Ave.....	27.60
——, Pike and Pioneer Sts.....	.36
Strube, 50 E. Court St.....	.72

———, 1808 Pleasant St., third floor.....\$	.36
Fraestner, 1929 Vine St.....	.64
———, 2248 Vine St.....	.36
Rottgers, 1822 Bremen St.....	.36
Laemen, 2033 Elm St.....	.36
———, 1808 Pleasant St., first floor.....	.40
Bridges, 1212 Bates Ave.....	1.17
Alberts, 1332 Bates Ave.....	1.00
———, 3233 Spring Grove Ave., second floor....	.06
Meyers, 2973 Spring Grove Ave.....	.56
Schellenburg, 2973 Spring Grove Ave.....	.08
Kessler, Colerain Ave.....	1.04
Conly, 2805 Colerain Ave.....	.82
Meckler, 2890 Massachusetts Ave.....	.64
Koch, 1139 Hopple St.....	1.22
C. Bauer, 1325 Elam St.....	.04
Ochs, 1228 Bates Ave.....	.64
Rider, 2904 Colerain Ave.....	.04
Hedrich, 2871 Henshaw St.....	.08
Schnieder, 2933 Sidney Ave.....	.48
Meyers, 2926 Sidney Ave.....	1.44
Bender, 2917 Sidney Ave.....	.72
Paul, 2876 Sidney Ave.....	.08
Komman, 2627 Spring Grove Ave.....	.20
Haberdank, 1136 Marshall Ave.....	.22
Yaeger, 2869 Colerain Ave.....	.52
Hansey, 2902 Colerain Ave.....	.08
Durban, 2902 Colerain Ave.....	.04
Schappelle, 2904 Colerain Ave.....	1.84
Meyers, 415 Bank St.....	.08
Hoffmann, 415 Bank St.....	.08
Bauer, 2250 Spring Grove Ave.....	.04
Pheiffer, 2413 Spring Grove Ave.....	.08
Mieners, 2440 Spring Grove Ave.....	6.34
Ruprecht, 1023 Straight St.....	.12
Ritzer, 2132 Central Ave.....	46.72

Hoeffner, 2109 Turner Alley.....	\$ .64
Rigner, 2103 Winchell Ave.....	.04
Lamper, 1726 Baymiller St.....	1.70
Orr, 1111 York St.....	1.04
Fitzer, 1937 Central Ave.....	.84
Brinkmeyer's Grocery, 2001 Baymiller St.....	7.00
Kattelman, 908 York St.....	.33
Sieweld, 448 Dayton St.....	.12

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\$ 176.35

NOTE.—The above accounts are as of May 20, 1912. Since that date some money has been collected and will show in my account of collections.

B. 22 shares the Model Dairy Co., Cincinnati, Ohio,  
 at \$70 .....\$1,540.00

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\$1,716.35

Property belonging to bankrupt and claimed to be  
 exempt by him:

1 Bedroom set (bed, table and wardrobe).....	\$25.00
1 Crib and 2 small beds.....	7.00
20 Chairs (straight back and rocking)....	16.50
2 Small tables .....	2.00
1 Carpet .....	5.00
1 Carpet .....	7.50
1 Carpet .....	2.50
Matting .....	1.00
Linoleum .....	2.50
1 Wardrobe .....	6.00
1 Chiffonier .....	5.00
1 Table .....	1.50
1 Center table .....	3.00
1 Brass lamp .....	\$ 1.50
14 Pictures .....	10.00
1 Sofa .....	10.00
1 Dining room table.....	7.50



1 Old sofa .....	\$ 2.50
1 Sewing machine .....	10.00
1 Sideboard .....	8.00
2 Ranges (one coal and one gas).....	15.00
1 Refrigerator .....	5.00
2 Kitchen cabinets .....	10.00
Wash tub and wringer.....	1.00
	<hr/> \$165.00

## SUMMARY

Real estate .....	\$16,100.00
Cash on hand.....	1.00
Stock in trade.....	25.65
Horses, cows and other animals.....	540.00
Carriages and other vehicles.....	700.00
Machinery, tools, etc.....	2,150.00
Other personal property.....	253.00
Debts due on open accounts.....	176.35
Stocks, negotiable bonds, etc.....	1,540.00
Property claimed to be excepted.....	165.00
	<hr/>
Total.....	\$21,651.50

## EXHIBIT B

Cincinnati, Ohio, April 9, 1912.

I, J. E. Rappoport, receiver of the Henry Menke Union Dairy, in pursuance to an order of the Insolvency Court of Hamilton County, Ohio, made this day, do hereby sell, transfer and assign to Edward E. Ridder, of Cincinnati, the goodwill of the business of said Henry Menke Union Dairy, in consideration of four hundred and fifty dollars (\$450), receipt of which is hereby acknowledged.

It is understood by and between J. E. Rappoport, receiver, and said Edward E. Ridder that said Edward E. Ridder is to pay for milk supplied by Edwin G. Peters on April 9, 1912, and thereafter, so long as it is mutually agreeable between

said Ridder and said Peters for said Peters to supply milk to Edward E. Ridder for the goodwill hereinabove mentioned

J. E. Rappoport, Receiver.

Edward E. Ridder.

Witness: Isaac M. Wise.

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## Form No. 150

### Advertisement of Bankruptcy Receiver's Sale of Business

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF  
NEW YORK

In the Matter of Moe Weintraub, Bankrupt

Pursuant to an order of this court, the undersigned, receiver in bankruptcy, will offer for sale on Thursday, December 6, 1917, at 11 a. m., at the premises, No. 226 Rivington Street, Borough of Manhattan, City of New York, all of the assets of the above-named bankrupt, consisting of a stock of furniture, carpets and similar merchandise, fixtures, the right, title and interest of the receiver in and to the lease to the premises occupied by the bankrupt and the goodwill of said business in the manner following:

Sealed bids for the property may be submitted to the receiver at the premises, No. 226 Rivington Street, Borough of Manhattan, City of New York, December 6, 1917, at 11 o'clock in the forenoon of that day, at which time and place bids will be opened by the receiver, and the creditors can attend and express themselves in regard thereto. Each bid must be accompanied by a certified check or cash for at least ten (10%) per cent. of the amount of the bid. The receiver reserves the right to reject any and all bids; if any or all sealed bids are rejected, then the property will be offered for sale on open competitive bids immediately thereafter. Open competitive bids must likewise be accompanied by a certified check or cash for at least ten (10%) per cent. of the amount of the

bid. If the open competitive bids, or any of them, shall not be as large as the corresponding sealed bids, then the receiver reserves the right at such time to accept the sealed bids, or any of them, providing said bids shall be for a sum not less than the appraised value of the property so bid for. The full purchase price or any and all bids accepted by the receiver must be paid immediately after the sale.

No representation or guarantees of any kind are made by the receiver as to the character, quality or quantity, or the description of the merchandise, or as to any other property offered for sale. All property must be removed not later than December 8, 1917, unless special arrangements are made with the landlord permitting the purchasers to remain on the premises, and such continued occupation by the purchasers shall be at the purchaser's own expense.

The above property may be inspected at the premises of the above bankrupt, to wit: 226 Rivington Street, Borough of Manhattan, City of New York, between the hours of 11 a. m. and 4 p. m. on and after November 30, 1917.

The receiver reserves the right to reject any and all bids. For further information apply to receiver or his attorney. Marcus Helfand, Receiver, 320 Broadway, New York City.

Max Miller, Attorney for Receiver, 261 Broadway,  
New York City.

Dated New York, November 28, 1917.

**Form No. 151****Order Allowing and Approving Receiver's Final Report and Account, and Discharging Receiver\***

(Entered by Judge Hollister January 10, 1912)

This day came George R. Young and Dixon Boardman, heretofore duly appointed and qualified herein as receivers of the Platt Iron Works Company, and it being made to appear to the court that said receivers were, on November 20, 1911, superseded by trustees in bankruptcy, duly appointed for the Platt Iron Works Company, pursuant to the provisions of the Bankruptcy Act, and that they thereupon ceased to act further as such receivers and delivered possession of all the property in their hands to said trustees and that they have since filed in this court their final report and account as such receivers.

And thereupon, no objections or exceptions having been filed thereto, the same is found to be in all respects true and correct

It is accordingly ordered that said report and account be and the same is hereby allowed, approved and confirmed, and further, that said receivers be and they are hereby discharged from their trust position as such receivers, and that the official bonds of said receivers be surrendered up and cancelled.

And it is further ordered that the trustees in bankruptcy herein be and they are hereby instructed to collect from the National Surety Company, of New York, the surety on said bonds, any return premiums to which the estate of said the Platt Iron Works Company may be entitled by reason of such cancellation.

\* Record and Briefs No. 2549. United States Circuit Court of Appeals for the Sixth Circuit. The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, Appellant, v. J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, as Trustees in Bankruptcy of The Platt Iron Works Company, Appellees.

**Form No. 152****Receiver in Bankruptcy—Application for Fees**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt

*Application for Receiver's Fees*

Now comes Ralph E. Clark, heretofore appointed receiver in the above case, and represents to the court that he has filed his report as receiver herein; that, subsequent to his receivership, he was elected trustee in bankruptcy of Henry Menke; that the total amount of money received and earned for the bankrupt's estate, to date, is as follows:

Sale of McMicken Ave. real estate.....	\$ 2,950.00
Sale of Mohawk Place real estate.....	4,800.00
Sale of personal property .....	2,564.09
Cash received from state receiver.....	1.00
Collections and earnings as receiver.....	348.27
Collections and earnings as trustee.....	448.11

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Total.....\$11,111.43

The receiver asks an allowance of receiver's fees as follows:  
Commissions as provided for in paragraph D, section 48,

of the Bankrupt Act as amended June 25, 1910...\$240.00

Additional compensation as provided for in paragraph

E, section 48, of the same act and its amendment.. 240.00

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Total.....\$480.00

Said additional compensation being for running the bankrupt's property and machinery as a going plant, keeping the same in repair, collecting revenue for the use of same, renting other parts of the premises to the old tenants of the bankrupt and securing new tenants therefor.

Ralph E. Clark, Trustee in Bankruptcy of Henry Menke, Bankrupt.

**Form No. 153****Order of Reference in Bankruptcy \***

Whereas, the L. P. Hazen Company, of Cincinnati, Ohio, in the County of Hamilton and district aforesaid, on November 28, A. D. 1910, was duly adjudged a bankrupt upon a petition filed in this court against it on September 30, A. D. 1910, according to the acts of Congress relating to bankruptcy.

It is thereupon ordered that said matter be referred to William H. Whittaker, of the County of Hamilton and State of Ohio, one of the referees in bankruptcy of this court, to take such further proceedings therein as are required by said acts; and that the said the L. P. Hazen Company shall attend before said referee forthwith at Cincinnati, Ohio, and thenceforth shall submit to such orders as may be made by said referee or by this court relating to said bankruptcy.

Witness the Honorable Howard C. Hollister, judge of the said court and the seal thereof, at Cincinnati, Ohio, in said district on November 28, A. D. 1910.

Attest:

[SEAL]

B. E. Dilley, Clerk.

\* Record and Briefs No. 2525. United States Circuit Court of Appeals for the Sixth Circuit. The Massachusetts Bonding & Insurance Company, a corporation under the laws of the State of Massachusetts, Appellant, v. Frank H. Kemper, Trustee in Bankruptcy of the L. P. Hazen Company, Appellee.

**Form No. 154****Appointment and Qualification of Trustee in Bankruptcy \***

It appearing to the court that Jacob F. Hartlieb and Hugo Victor, of Dayton, and A. Clifford Shinkle, of Cincinnati, in said district, have been duly appointed trustees of the estate of the above-named bankrupt, and have each given a bond with sureties for the faithful performance of his official duties in the amount fixed by the creditors, to wit, \$50,000, it is ordered that the said bonds be and the same are hereby approved.

W. S. McConnaughey, Referee in Bankruptcy.

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**Form No. 155****Application of Trustee for the Sale of Real and Personal Property †**

Now comes Frank H. Kemper, trustee in bankruptcy herein, and files this his application and represents to the court that it is for the best interest of the bankrupt estate herein to sell all and singular the personal property belonging to the said bankrupt estate, a schedule of which has been filed herein and due appraisalment thereof ordered.

Your trustee further represents that there is included in the assets of the estate herein certain real estate, and it is for the best interest of the bankrupt estate to sell the same, the description of said real estate being as follows:

“Situate in Williamsburg Township, Clermont County, State of Ohio, and being parts of out lots Nos. nine (9) and

\* Record and Briefs No. 2549. United States Circuit Court of Appeals for the Sixth Circuit. The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, Appellant, v. J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, as Trustees in Bankruptcy of The Platt Iron Works Company, Appellees.

† Record and Briefs No. 2525. United States Circuit Court of Appeals for the Sixth Circuit. The Massachusetts Bonding & Insurance Company, a corporation under the laws of the State of Massachusetts, Appellant, v. Frank H. Kemper, Trustee in Bankruptcy of the L. P. Hazen Company, Appellee.

ten (10) and eleven (11) of the Village of Williamsburg in said county, said parts of said lote being bounded and described as follows: Beginning at most southerly corner of said lot No. 9; thence with the line of out lot No. 7, N. 56 degrees W., passing the most westerly corner of said out lot No. 9, at 23 poles to a stake in the line of out lot No. 10, and twenty-five feet from the center of the track of the N. W. R. R.; thence parallel with said track twenty-five feet from the center thereof to a stake in the front line of out lot No. 11; thence with said front line S. 34 degrees W. 37.5 poles to the place of beginning, containing four acres of land, more or less. Said out lots are known, designated and described by said numbers on the recorded plat or plan of said village.

Also the following described real estate in the township, county and state aforesaid, the same being part of out lots Nos. 8 and six (6) and the whole of out lot No. 7 of the Village of Williamsburg in said county and state, said parts being bounded and described as follows: Beginning at the most southerly corner of said out lot No. 8; thence with the line of the same N. 56 degrees W. 19 poles to a stake; thence on out lot No. 6 N. 80½ degrees W. in front line of said last aforesaid lot; thence with said front line N. 34 degrees E. to a stake in said line standing 25 feet from the center of the main track of the O. N. & W. R. R.; thence with said track 25 feet from the center thereof to a stake in the line between out lots Nos. 8 and 10; thence with said line S. 56 degrees E. to the northeasterly corner of said lot No. 8; thence with the line of the same S. 34 degrees W. 20 poles to the beginning. Said out lots are all known, designated and described by said numbers on the recorded plat or plan of said village.

Also the following described real estate situate in the county, township and state aforesaid, and in survey No. 2810, and bounded and described as follows: Beginning at a stake standing N. 56½ degrees W. three poles from the most westerly



corner of inlot No. 435 in the Village of Williamsburg, in said county; thence parallel with the northwest line of the said inlots, and three poles therefrom, N.  $33\frac{1}{4}$  degrees E. 36 poles to a stake standing N.  $56\frac{1}{2}$  degrees W. three poles from the most northwest corner of inlot No. 445 in said village; thence  $56\frac{1}{2}$  degrees W. 37 poles to a stake standing 25 feet from the center of the main track of the C. P. & V. R. R. and three poles of the line of the out lots of said village; thence parallel with the last aforesaid line and three poles therefrom, S.  $33\frac{1}{2}$  degrees W. 36 poles to a stake; thence S.  $66\frac{1}{2}$  degrees E. 37 poles to the beginning, containing 8 3-100 acres, more or less. Being the same premises conveyed to the grantors herein by T. G. Foster, J. F. Knight, J. C. Fuhr and George Brintzinghoffer by deed dated April 24, 1902, and recorded in Deed Book 151, page 388, Clermont County records.

Your trustee asks that all of the creditors of the bankrupt herein be notified of this application, and that a day be fixed in which same shall be considered by the referee, and that he be authorized to sell all of the personal property and real estate and that all of the real estate herein described should be sold free from all claims of any kind whatsoever, and that the terms and conditions of the sale be fixed as by the statutes in bankruptcy provided.

Frank H. Kemper, Trustee for the L. P. Hazen Company, Bankrupt herein.

Pogue & Pogue, Morse, Tuttle & Harper, Attorneys for Trustee.

(Duly verified.)

**Form No. 156****Answer of Mortgagee to Trustee's Petition to Sell Real Estate**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 4916

In re Joseph Krimmer, Henry Klostermann and the Charles  
Boldt Company,

v.

Henry Menke.

*Answer and Cross-Petition of Joseph Rehkamp*

To the Honorable Charles T. Greve, Referee in Bankruptcy:

Now comes the defendant, Joseph Rehkamp, and waives the issuance and service of summons upon him, and enters his voluntary appearance herein, and for answer to the petition of the Honorable Ralph Clark, trustee herein, and says that he admits that he has a claim or lien upon the premises secondly described in said trustee's petition to sell the real estate of the bankrupt herein, and admits all the other allegations in his said petition contained except as hereinafter denied, and joins in the prayer of said trustee's petition herein to sell the real estate of the bankrupt, Henry Menke.

1. This defendant by way of further answer and cross-petition, says that on or about October 24, 1910, the said bankrupt, Henry Menke, made, executed and delivered to this defendant his one certain promissory note, in writing, of that date, to the order of this defendant, for the sum of one thousand (\$1,000) dollars, payable six (6) months after date, with interest from the date thereof at the rate of five (5%) per cent. per annum until maturity, and at the rate of eight (8%) per cent. per annum after maturity, a copy of which said note is hereto attached, made a part hereof, marked "Exhibit A", said copy containing all the endorsements thereon.

This defendant further says that he is now the owner and holder of said note and that there is now due and owing to him, on account thereof, the sum of one thousand (\$1,000)

dollars, together with interest thereon at the rate of eight (8%) per cent. per annum from October 24, 1911, the date to which the interest has been paid.

2. This defendant by way of further answer and cross-petition says that on or about October 25, 1910, in order to secure the payment of the promissory note herein above set forth, the said Henry Menke, and Sophia Menke, his wife, with full release of dower on her part, made, executed and delivered to this defendant their certain mortgage deed and thereby conveyed to this defendant the following described real estate to wit:

All that certain lot of land designated as Lot 34 in Morris & Goodin's Subdivision, Millcreek Township, north of Cincinnati and northwest of the Mohawk Bridge, now in the City of Cincinnati, County of Hamilton, and State of Ohio, and fronting on the canal 27 feet in width and fronting the center of the old road 35 feet by about 110 feet long on the east side of said lot from the canal to a line 15 feet from the center of the old vacated Hamilton road, nor recognized as a street 45 feet in width. Said lot being about 80 feet northwest from the street, crossing the canal as per recorded map, which street where it crosses the bridge is marked in said recorded map as 45 feet wide. And being the same premises conveyed to the grantor herein by deed recorded in Deed Book 1005, page 59 of the Hamilton County, Ohio, records.

That said mortgage deed was delivered to the recorder of Hamilton County, Ohio, for record on October 27, 1910, at 3.55 o'clock p. m., and was by him duly recorded in Mortgage Book No. 930, page 110 of the records of mortgages in said county and thereby became and now is the first and best lien upon said premises. A copy of which mortgage deed, together with all endorsements thereon, is hereto attached, made a part hereof marked "Exhibit B."

Wherefore this defendant prays that the amount due upon his said note and mortgage may be determined; that the said real estate may be ordered sold free from his lien

aforesaid and that out of the proceeds thereof he may be decreed to have a first and prior lien for the amount determined aforesaid, and that said sum so determined may be paid him first and preferable to all others and for all such further relief as he may be entitled to.

———, Attorney for Jos. Rehkamp.

State of Ohio, Hamilton County, ss.:

Joseph Rehkamp, being first duly sworn, says that he is the defendant above named herein and that the allegations in his foregoing answer and cross-petition are true as he verily believes.

Sworn to before me this ——— day of July, 1912.

———, Notary Public, Hamilton County, Ohio.

## Form No. 157

### Appointment of Appraisers of Real and Personal Property

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO.  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt.

#### *Appointment of Appraisers*

It is ordered that Wm. B. Poland, Glen Brown and Joseph H. Hart, all of Cincinnati, Ohio, three disinterested persons, be, and they are hereby, appointed appraisers to appraise the real and personal property belonging to the estate of the said bankrupt set out in the schedules now on file in this court, and report their appraisal to the court, said appraisal to be made as soon as may be, and the appraisers to be duly sworn.

Witness my hand this ——— day of June, 1912.

**Form No. 158****Appraisement of Real and Personal Property**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO.  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt.

*Appraisement of Real and Personal Property*

Southern District of Ohio, Western Division, ss.:

Personally appeared Wm. B. Poland, Glen Brown and Joseph H. Hart and severally made oath that they will truly and fairly appraise the real and personal property belonging to the estate of Henry Menke, bankrupt, set out in the schedules now on file in this court, according to their best skill and judgment.

Wm. B. Poland, Glen Brown, Jos. H. Hart.

Subscribed and sworn to before me this day, June 14, 1912.

[SEAL] Ralph E. Clark, Notary Public, Hamilton County,  
Ohio.

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, have attended to the duties assigned us, and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:

Real estate, 2007, 2009 Mohawk Place, Cincinnati,  
Hamilton County, Ohio:

Being Lots No. 1 and 2 in the subdivision of Lots No. 31 and 32 made by Joseph Cooper, Sheriff of Hamilton County, Ohio, said Lots No. 1 and 2 fronting 45½ feet on the north side of Mohawk Place (formerly Hamilton Road), and extending northwardly 80 feet more or less to the northwest line of said lots, being the same premises conveyed to Henry Menke by Bernard Menke, his brother, and wife, by deed dated July 14, 1910, and recorded in Deed Book 1029, page 199, Hamilton County records; 2007

Mohawk Place containing one frame, metal roof building; 2009 Mohawk Place containing one brick front, metal roof building. Appraised at.....\$ 6,450.00

295, 297 W. McMicken Ave., Cincinnati, Hamilton County, Ohio:

Being all that certain lot of land designated as Lot No. 34 in Morris & Goodin's Subdivision, Millcreek Township, Hamilton County, Ohio, in the City of Cincinnati, and fronting on the Canal 27 feet in width and fronting the center of the old road 35 feet by about 110 feet long on the east side of said lot from the Canal to a line 15 feet from the center of the old vacated Hamilton road, now recognized as a street, 45 feet in width; 295 W. McMicken Ave. containing a two-story brick building; 297 W. McMicken Ave. containing a two-story frame building. Appraised at ..... 3,540.00

Creamery Building: Being a leasehold located at Butler, Pendleton County, Ky., on property belonging to A. J. Grant of said Butler, Ky. Appraised at.... 200.00

Real estate—Total value.....\$10,190.00

#### PERSONAL PROPERTY

Cash on hand 4/22/12. Appraised at..... \$ 1.00

Stock in trade at 2009 Mohawk Place:

40 Lippincott jelly .....	05	\$ 2.00
24 Shoepeg corn .....	05	1.20
29 Neptune sardines .....	04	1.16
3 Campbell's beans .....	05	.15
2 Karo cork syrup .....	05	.10
8 Salad oil .....	06	.48
9 Durkee's salad dressing.....	05	.45
7 5c Royal baking powder .....	02½	.16
30 White Cap baking powder.....	03	.90
5 Harrison's buckwheat .....	04	.20

6 Aunt Jemima's pancake flour...	04	.24	
9 Hamburger steak .....	05	.45	
4 Libby's chile con carne .....	05	.20	
5 Salmon, canned .....	05	.25	
4 Cans peaches .....	06	.24	
4 Cans peas .....	05	.20	
3 Cases Scourall .....		2.00	
21 Tin boxes Mason's shoe blacking...		.50	
5 Tin boxes T. M. shoe blacking.....		.15	
1 Pack paper bags.....		.12	
16 Rolls wrapping paper.....	15	2.40	
1 Half-barrel salt in bags.....		1.00	
1 Empty barrel .....			
2-3 Crock apple butter.....		.10	
1 Case Saner's flavors .....		1.60	
2 Boxes National Baking Co., Gem oysters, Princess sodas.....		.20	
1 Doz. brooms .....		1.80	
3 Cases corn .....		6.00	
1 Paper holder .....		1.00	
Appraised at .....		\$	25.25
Six horses. Appraised at.....		\$	540.00
Wagons, etc.:			
7 Milk wagons (including wholesale)...		\$350.00	
1 Wholesale wagon .....		20.00	
1 Surrey .....		30.00	
4 Sets harness .....		40.00	
Appraised at .....	—	\$	440.00
Machinery, Fixtures, Apparatus and Tools located at 2007, 2009 Mohawk Place and 195, 197 W. McMicken Ave., Cincinnati, Ohio:			
Brine pump and pipes.....		\$	25.00
New pasteurizer and cooler.....		150.00	
Old pasteurizer and cooler.....		10.00	
Washing machine .....		125.00	
Bottle filler and capper.....		50.00	

2 Milk pumps .....	\$ 30.00
2 Milk vats .....	20.00
Shafting, hangers, belts, pipes.....	40.00
25 H. P. boiler and stack.....	30.00
Ice machine, compressor and pipes....	75.00
Engine, 25 H. P.....	45.00
Ice box 2 brine tank (built in bldg.)	
4 Milk trucks .....	16.00
1 Clock .....	2.00
5 Chairs .....	2.00
1 National cash register.....	35.00
2 Counters and glass case.....	10.00
1 Ice box .....	5.00
1 Scale (Toledo).....	20.00
1 Safe .....	15.00
3 Desks .....	5.00
159 cases quart bottles (6 doz. a case).	160.00
200 cases pint bottles (12 doz. a case).	150.00
27 cases 1/2-pt. bottles (12 doz. a case)	27.00
303 cases 10-oz. buttermilk bottles (12 doz. a case).....	1.00
322 wooden bottle cases (10-oz. bottles)	32.20
200 wooden bottle cases (pint bottles).	20.00
27 10-gal. milk cans.....	70.00
20 5-gal. milk cans.....	40.00
15 3-gal. milk cans.....	20.00
45 2-gal. milk cans.....	30.00
40 1-gal. milk cans.....	12.00
5 15-gal. milk cans.....	20.00
1 Typewriter .....	30.00
Large scale .....	30.00
Appraised at .....	— \$ 1,352.20

## Creamery Machinery at Butler, Ky.:

1 Boiler .....	\$ 15.00
1 8-H. P. engine .....	25.00
1 Churn .....	15.00



1 Milk tester .....	\$ 7.00	
2 Milk vats .....	20.00	
1 Lot butter tubs .....	5.00	
2 Iron milk tanks.....	25.00	
1 Desk .....	1.00	
1 Sink .....		
Piping .....	10.00	
1 Steam pump .....	8.00	
Appraised at .....	—	\$ 131.00

## Debts Due on Open Account:

Marks, 620 Findlay.....	\$ .34
Voegele, 409 Oliver.....	1.60
Windisch-Muhlhauser Brewing Co....	1.20
Rodenbeck, 445 Oliver.....	.36
Risch, S. W. Wade and John.....	1.36
Miller, 1505 John St.....	.16
Miller, 1505 John St.....	3.98
Katzenberger, 1609 Linn St.....	1.88
Barnes, 1556 Whriter Alley.....	1.40
Betz, 1045 W. Liberty.....	.80
Finsch, 1602 Western Ave.....	1.28
Hilbert, 1074 Willstach St.....	1.00
Weingarter, S. E. Flint and Dalton....	.88
Beekhouse, 938 Wade St.....	.77
Thomas, 911 Armory Ave. (moved out of city) .....	.36
Kruse, 1552 Baymiller.....	.64
Masch, 727 Clinton St.....	1.22
Krieger, 521 Clinton St.....	1.80
Wessel, 528 Laurel St.....	.56
Groshein, 1442 Freeman Ave.....	.20
Burns, 954 Betts St.....	4.26
Fischer, 900 Betts St.....	4.00
Schwartz, 1307 Cutter St.....	4.84
Lamber, 908 Gest St.....	3.04
Teckmeyer, 1063 Rittenhouse.....	1.80

Huber, 552 Armory Ave.....	\$ .90
Goodman, 1513 Jones St. (moved to Chicago) .....	.20
Newhouse, 278 Stark St.....	.36
Jones, 1057 John St.....	.08
Bark, 555 Eighth St.....	.36
Ransick, 541 Eighth St.....	.36
Fleck, 721 W. Ninth St.....	.08
Lake, 430 E. 12th St.....	1.44
Frommeyer, 430 E. 12th St.....	.92
——, 506 E. 12th St., 4th fl. rear...	.84
Kunz, 518 Dandridge.....	.56
——, 516 E. 13th St., 1st fl. rear...	.92
Mitchell, N. E. Cor. 12th & Sycamore..	.36
——, 223 E. 12th St.....	1.04
——, N. E. Cor. Hunt and Pendle- ton, 2d fl. rear.....	.44
Magel, 1340 Walnut St.....	.32
Brockman, 1337 Clay St.....	.36
Kistermaker, 1615 Hughes St.....	2.68
O. Neil, 1637 Moore St.....	.40
Buchwalter, 1637 Moore St.....	.46
Stock, 1103 Walnut St.....	1.96
——, 1340 Walnut St.....	.14
Lang, 2128 Loth St.....	2.08
Cook, 2219 Loth St.....	.36
——, 2115 Vine St.....	3.20
Schnay, 237 Mohawk St.....	.56
——, 229 Renner St.....	.60
Hooke, McMicken and Vine Sts.....	2.16
Dr. Beames, 290 W. McMicken Ave...	1.44
Weisenbecker, McMicken Ave.....	1.72
Rissert, 558 W. McMicken Ave.....	27.60
——, Pike and Pioneer Sts.....	.36
Strube, 50 E. Court St.....	.72
——, 1808 Pleasant St. (3d floor)...	.36

Fraestner, 1929 Vine St.....\$	.64
———, 2248 Vine St.....	.36
Rottgers, 1822 Bremen St.....	.36
Laemen, 2033 Elm St.....	.36
———, 1808 Pleasant St. (1st floor) ..	.40
Bridges, 1212 Bates Ave.....	1.17
Alberts, 1332 Bates Ave.....	1.00
———, 3233 Spring Gr. Ave. (2d fl.).	.06
Meyers, 2973 Spring Grove Ave.....	.56
Schellenberg, 2973 Spring Grove Ave..	.08
Kessler, Colerain Ave.....	1.04
Conly, 2805 Colerain Ave.....	.82
Meckler, 2890 Massachusetts Ave.....	.64
Koch, 1139 Hopple St.....	1.22
C. Bauer, 1325 Elam St.....	.04
Ochs, 1228 Bates Ave.....	.64
Rider, 2904 Colerain Ave.....	.04
Hedrich, 2871 Henshaw Ave.....	.08
Schnieder, 2933 Sidney Ave.....	.48
Meyers, 2926 Sidney Ave.....	1.44
Bender, 2917 Sidney Ave.....	.72
Paul, 2876 Sidney Ave.....	.08
Komman, 2627 Spring Grove Ave.....	.20
Haderdank, 1136 Marshall Ave.....	.22
Yaeger, 2869 Colerain Ave.....	.52
Hansey, 2902 Colerain Ave.....	.08
Durban, 2902 Colerain Ave.....	.04
Schappelle, 2904 Colerain Ave.....	1.84
Meyers, 415 Bank St.....	.08
Hoffman, 415 Bank St.....	.08
Bauer, 2250 Spring Grove Ave.....	.04
Pheiffer, 2413 Spring Grove Ave.....	.08
Mieners, 2440 Spring Grove Ave.....	6.34
Ruprecht, 1023 Straight St.....	.12
Ritzer, 2132 Central Ave.....	46.72
Hoeffner, 2109 Turner Alley.....	.64

Rigner, 2103 Winchell Ave.....	\$ .04
Lamper, 1726 Baymiller St.....	1.70
Orr, 1111 York St.....	1.04
Fitzer, 1937 Central Ave.....	.84
Brinkmeyers Grocery, 2001 Baymiller.	7.00
Kattelman, 908 York St.....	.33
Sieweld, 448 Dayton St.....	.12

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\$176.35

Appraised at .....	\$ 150.00
22 Shares the Model Dairy Co., Cincinnati, Ohio. Appraised at.....	\$ 1,540.00

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Personalty—Total ..... \$ 4,179.45

Property claimed to be exempt:

- 1 Bedroom set (bed, table and wardrobe)
- 1 Crib and 2 small beds
- 20 Chairs (straight back and rocking)
- 2 Small tables
- 1 Carpet
- 1 Carpet
- 1 Carpet
- Matting
- Linoleum
- 1 Wardrobe
- 1 Chiffonier
- 1 Table
- 1 Center table
- 1 Brass lamp
- 14 Pictures
  - 1 Dining room table
  - 1 Sofa
  - 1 Old sofa
  - 1 Sewing machine
  - 1 Sideboard
  - 2 Ranges (1 coal and 1 gas)

- 1 Refrigerator
- 2 Kitchen cabinets
- Wash tub and wringer

In witness whereof we hereunto set our hands, at Cincinnati, Ohio, this day, June 18, A. D. 1912.

Wm. B. Poland, Glen Brown, Jos. H. Hart.

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## Form No. 159

### Order of Sale by Trustee in Bankruptcy \*

Now on this day, January 24, 1911, at two o'clock a. m., at the office of William H. Whittaker, referee in bankruptcy, at Cincinnati, Ohio, comes on to be heard the application of the trustee in bankruptcy for the sale of real and personal property belonging to the estate of the L. P. Hazen Company, bankrupt, filed with said referee on January 12, 1911, of which hearing ten days' notice was given by mail to the creditors of said bankrupt.

Now, after due hearing, it is ordered that the said trustee be authorized to sell all of the personal property belonging to said estate as prayed for in said application, and that the said trustee sell the real estate therein described free and clear of all claims of any kind whatsoever, the description of said real estate being as follows:

"Situate in Williamsburg Township, Clermont County, State of Ohio, and being parts of out lots Nos. nine (9) and ten (10) and eleven (11) of the Village of Williamsburg in said county, said parts of said lots being bounded and described as follows: Beginning at most southerly corner of said lot No. 9; thence with the line of out lot No. 7, 56 degrees W. passing the most westerly corner of said out lot No. 9 at 32

\* Record and Briefs No. 2525. United States Circuit Court of Appeals for the Sixth Circuit. The Massachusetts Bonding & Insurance Company, a corporation under the laws of the State of Massachusetts, Appellant. v. Frank H. Kemper, Trustee in Bankruptcy of the L. P. Hazen Company, Appellee.

poles to a stake in the line of out lot No. 10 and 25 feet from the center of the track of the N. W. R. R., thence parallel with said track 25 feet from the center thereof to a stake in the front line of out lot No. 11; thence with said front line S. 34 degrees W. 37.5 poles to the place of beginning, containing four acres of land, more or less—said out lots are known, designated and described by said numbers on the recorded plat or plan of said village.

Also the following described real estate in the township, county and state aforesaid, the same being part of out lots Nos. 8 and six (6) and the whole of out lot No. 7 of the Village of Williamsburg in said county and state, said parts being bounded and described as follows: Beginning at the most southerly corner of said out lot No. 8; thence with the line of the same N. 56 degrees W. 19 poles to a stake; thence on out lot No. 6 N. 80½ degrees W. in front line of said last aforesaid lot; thence with said front line N. 34 degrees E. to a stake in said line standing 25 feet from the center of the main track of the N. & W. R. R.; thence parallel with said track 25 feet from the center thereof to a stake in the line between out lots Nos. 8 and 10; thence with said line S. 56 degrees E. to the northeasterly corner of said lot No. 8; thence with the line of the same S. 34 degrees W. 20 poles to the beginning; said out lots are all known, designated and described by said numbers on the recorded plat or plan of said village.

Also the following described real estate situate in the county, township and state aforesaid, and in survey No. 2810, and bounded and described as follows: Beginning at a stake standing N. 56½ degrees W. 3 poles from the most westerly corner of in lot No. 435 in the Village of Williamsburg in said county; thence parallel with the N. W. line of the said in lots and 3 poles therefrom N. 33¼ degrees N. 36 poles to a stake standing N. 56½ degrees W. 3 poles from the most N. W. corner of in lot No. 445 in said village; thence 56½ degrees W. 37 poles to a stake standing 25 feet from the

center of the main track of the C. P. & V. R. R. and 3 poles of the line of the out lots of said village; thence parallel with the last aforesaid line and 3 poles therefrom, S.  $33\frac{1}{2}$  degrees W. 36 poles to a stake; thence S.  $66\frac{1}{2}$  degrees E. 37 poles to the beginning, containing 8  $\frac{3}{4}$ -100 acres more or less. Being the same premises conveyed to the grantors herein by T. G. Foster, J. F. Knight, J. C. Fuhr and George Brintzinghoffer by deed dated April 24, 1902, and recorded in Deed Book 151, page 388, Clermont County records.

It is further ordered that the terms and conditions of said sale of personal and real estate be fixed as by the statutes in bankruptcy provided.

William H. Whittaker, Referee in Bankruptcy.

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## Form No. 160

### Advertisement of Sale of Real Estate

#### *Trustee's Sale in Bankruptcy*

The Henry Menke real estate at auction, Wednesday, July 24, 1912, at 10 o'clock a. m., on the premises, Nos. 2007 and 2009 Mohawk Place. Lot  $45\frac{1}{2}$ x80 feet with two frame dairy buildings thereon.

Being Lots Nos. 1 and 2 in the subdivision of Lots 31 and 32 made by Joseph Cooper, sheriff of Hamilton County, Ohio, said Lots Nos. 1 and 2 fronting  $45\frac{1}{2}$  feet on the north side of Mohawk Place, Cincinnati, Hamilton County, Ohio, and extending northwardly 80 feet more or less to the northwest line of said lots, being the same premises conveyed to Henry Menke by Bernard Menke, his brother, and wife, by deed dated July 14, 1910, and recorded in Deed Book 1029, page 199, Hamilton County records. Appraised at \$6,450, three-fourths of which is \$4,837.50.

Also immediately thereafter, on the premises, Nos. 295 and 297 W. McMicken Ave. (adjoining the preceding property). Lot 35x110 feet with brick and frame buildings thereon.

“Being all that certain lot of land designated as Lot No. 34 in Morris & Goodin’s Subdivision, Millcreek Township, Hamilton County, Ohio, in the City of Cincinnati and fronting on the canal 27 feet in width and fronting the center of the old road 35 feet by about 110 feet long on the east side of said lot from the canal to a line 15 feet from the center of the old vacated Hamilton road, now recognized as a street, 45 feet in width. Appraised at \$3,540, three-fourths of which is \$2,655.

By order of the United States District Court, Southern District of Ohio, Western Division, No. 4916. In bankruptcy.

Charles T. Greve, Referee, 320 Carlisle Bldg.,  
Ralph E. Clark, Trustee, Burton P. Hollister, Attorney, 1325 Union Trust Bldg.

Eisenman & Rappaport, Attorneys for the Bankrupt, 609 Mercantile Library Bldg.

Terms of sale—cash.

N. B.—Descriptive circulars on application, the Ezekiel & Bernheim Co., Auctioneers, 334 Main Street.

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## Form No. 161

### Trustee’s Report of Sale of Personal Property

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt.

### *Trustee’s Report of Sale of Personal Property*

To the Hon. Chas. T. Greve, Referee in Bankruptcy:

The undersigned, Ralph E. Clark, trustee in bankruptcy of Henry Menke, begs to report that, in accordance with the order of this court, he advertised for sale the bankrupt’s personal



property, proof of publication of notice in the Cincinnati Daily Enquirer, is hereto attached; that on Friday, June 28, 1912, at 10 a. m., on the premises, 2007 and 2009 Mohawk Place, Cincinnati, Ohio, he offered for sale at public auction the following articles, which were sold at the amounts placed respectively opposite the items:

93 Cans glasses jelly, corn and sardines.....	\$ 2.79
59 Cans beans, oil, baking powder, etc.....	1.25
58 Pcks. buckwheat and canned goods.....	2.32
3 S. Scourall (300 pcs.).....	4.50
3 S. corn, 72 cans.....	2.88
12 Brooms .....	2.90
1 Lot blacking and paper bags.....	.60
16 Rolls paper.....	5.60
1 Lot salt, flour and flavor.....	2.00
2 Paper holders .....	1.00
1 G. D. lot .....	2.25
1 Pasteurizer, cooler and pump.....	195.00
1 Brine pipe and pump .....	27.00
4 Trucks .....	17.00
1 clock, 5 chairs and 2 desks.....	11.00
1 Underwood typewriter .....	20.00
1 Scale .....	16.00
Machinery, fixtures, apparatus, tools, horses, wagons and harness, as per inventory.....	2,200.00
	<hr/>
	\$2,514.09

The last above items were sold to Bernard Menke for \$2,200, said Bernard Menke holding a chattel mortgage on said chattels to secure an indebtedness of \$4,000.

The undersigned trustee further reports that he offered at public auction, at Butler, Kentucky, Friday afternoon, June 28, 1912, at 3 p. m., the leasehold estate, with building, machinery, etc., belonging to Henry Menke; that A. J. Grant, owner of the fee of said leasehold, bid for the leasehold the sum of \$10, and for the machinery the sum of \$40, and there

were no other bids. The trustee recommends the acceptance of said bids and confirmation of said sales, and asks for such orders as the court may see proper to make in the premises.

\_\_\_\_\_, Trustee in Bankruptcy of Henry Menke.

\_\_\_\_\_, 1912.

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## Form No. 162

### Trustee's Report of Sale of Real Estate

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt.

### *Trustee's Report of Sale of Real Estate*

Now comes Ralph E. Clark, trustee in bankruptcy of Henry Menke, bankrupt, and reports to the court that on the \_\_\_\_\_ day of \_\_\_\_\_, 1912, he filed his petition in this cause, asking for an order to sell real estate belonging to the bankrupt set out in said petition; that the Cleveland Building Association Company of Cincinnati, Ohio, a corporation under the laws of Ohio, Joseph Rehkamp and Sophia Menke were made parties to this cause and set up their answers, setting forth their interests in this property; that notice was mailed to the creditors of the bankrupt June 10, and on June 26 an order was issued directing me, Ralph E. Clark, trustee, to sell said real estate on the premises July 24, 1912 at 10 a. m.; that I did advertise the sale thereof once a week for five consecutive weeks, commencing on June 20, 1912, in the Cincinnati Enquirer, newspaper printed and of daily circulation in the County of Hamilton, State of Ohio; that on July 24 at 10 a. m., on the premises, the following described real estate was offered at public auction:

Being Lots Nos. 1 and 2 in the subdivision of Lots 31 and 32 made by Joseph Cooper, sheriff of Hamilton County, Ohio, said Lots Nos. 1 and 2 fronting forty-five and one-half

(45½) feet on the north side of Mohawk Place, Cincinnati, Hamilton County, Ohio, and extending northwardly eighty (80) feet more or less to the northwest line of said lots, being the same premises conveyed to Henry Menke by Bernard Menke, his brother, and wife, by deed dated July 14, 1910, and recorded in Deed Book 1029, page 199, Hamilton County records.

A. T. Brannon of 4158 Mad Anthony Street, Cincinnati, Ohio, bid for the same the sum of \$4,500, and no more bids were made; but, on July ———— bid \$4,600 and deposited \$———, being the highest bid received, and there being no other bids and said bid being almost seventy-five per cent. of the appraised value of said property, I recommend the same for acceptance and ask that the sale to said ——— of the above described property be confirmed.

On July 24, 1912, I did also offer for sale at public auction the following described real estate:

Being all that certain lot of land designated as Lot No. 34 in Morris & Goodin's Subdivision, Millcreek Township, Hamilton County, Ohio, in the City of Cincinnati, and fronting on the canal twenty-seven (27) feet in width and fronting the center of the old road thirty-five (35) feet by about one hundred and ten (110) feet long on the east side of said lot from the canal to a line fifteen (15) feet from the center of the old vacated Hamilton road, now recognized as a street forty-five (45) feet in width.

A number of bids were made, the highest being \$2,950 bid by Joseph Rehkamp, said Rehkamp holding a second mortgage on the above described real estate and claiming an indebtedness against the bankrupt and a lien against said real estate of \$1,000, with eight per cent. interest per annum from October 24, 1911. Said bid of \$2,950 being more than seventy-five per cent. of the appraised value of said real estate, I recommend the acceptance of the same and the confirmation of the sale of said property to said Joseph Rehkamp.

Respectfully submitted, ———.

**Form No. 163****Trustee's Second Report of Sale of Real Estate**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt.

*Trustee's Second Report of Sale of Real Estate*

Now comes Ralph E. Clark, trustee in bankruptcy of Henry Menke, bankrupt, and reports to the court that, on June 10, 1912, he filed his petition in this cause, asking for an order to sell the real estate belonging to the bankrupt set out in said petition; that the Cleveland Building Association Company of Cincinnati, a corporation under the laws of Ohio, Joseph Rehkamp and Sophia Menke, wife of Henry Menke, were made parties to this cause and set up their answers setting forth their interest in said property; that notice was mailed to the creditors of the bankrupt June 10, and on June 26, an order was issued directing me, Ralph E. Clark, trustee, to sell said real estate on the premises, July 24, 1912, at 10 a. m.; that I did advertise the sale thereof once a week for five consecutive weeks, commencing on June 20, 1912, in the Cincinnati Enquirer, a newspaper printed and of daily circulation in the County of Hamilton, State of Ohio; that on July 24, 1912, at 10 a. m., on the premises, the following described real estate was offered at public auction:

Being Lots Nos. 1 and 2 in the subdivision of Lots Nos. 31 and 32 made by Joseph Cooper, sheriff of Hamilton County, Ohio, said lots fronting forty-five and one-half ( $45\frac{1}{2}$ ) feet on the north side of Mohawk Place (formerly Hamilton road), and extending northwardly eighty (80) feet more or less, to the northwest line of said lots; being the same premises also known as Lot No. 31 in a plat of subdivision made by Wm. R. Morris and Samuel W. Goodin and recorded in Deed Book 92, page 165, Hamilton County, Ohio, records; being the same premises conveyed to Henry and Bernard Menke by deed from

the Mohawk Place Loan & Building Company, recorded in Deed Book 953, page 4, Hamilton County records.

That A. T. Brannon of 4158 Mad Anthony Street, Cincinnati, Ohio, bid for the same the sum of \$4,500, and no more bids were made; that the said bid of \$4,500 was presented to the court but not accepted; that on September 10, 1912, upon order of Chas. T. Greve, referee, I readvertised said property for sale, once a week for five consecutive weeks, commencing on the ——— day of ———, in the Cincinnati Enquirer, a newspaper printed and of daily circulation in the County of Hamilton, State of Ohio; that on October 14, 1912, at 10 a. m., on the premises, I did offer the said property for sale at public auction, and Edward Albiez, 1808 Race Street, Cincinnati, Ohio, did bid for the same the sum of \$4,800, and did make a deposit on account of said bid of \$1,200; there were no higher bids, and I recommend the acceptance of said bid of Edward Albiez, and ask that the sale of said property to the said Edward Albiez be confirmed.

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## **Form No. 164**

### **Confirmation of Sale of Real Estate**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt.

This cause coming on to be heard upon application of the trustee, Ralph E. Clark, for an order confirming the sale of real estate made by him July 24, 1912, and it appearing to the court that the sale was made in conformity with law and for the best interests of the trust, it is therefore ordered that, upon receipt of \$4,600, Ralph E. Clark, trustee in bankruptcy of Henry Menke, convey to ——— the following described real estate:

Being Lots Nos. 1 and 2 in the subdivision of Lots 31 and 32 made by Joseph Cooper, sheriff of Hamilton County, Ohio, said Lots Nos. 1 and 2 fronting forty-five and one-half ( $45\frac{1}{2}$ ) feet on the north side of Mohawk Place, Cincinnati, Hamilton County, Ohio, and extending northwardly eighty (80) feet more or less to the northwest line of said lots, being the same premises conveyed to Henry Menke by Bernard Menke, his brother, and wife, by deed dated July 14, 1910, and recorded in Deed Book 1029, page 199, Hamilton County records.

That, upon receipt of \$2,950, Ralph E. Clark, trustee in bankruptcy of Henry Menke, convey to said Joseph Rehkamp the following described real estate:

Being all that certain lot of land designated as Lot No. 34 in Morris & Goodin's Subdivision, Millcreek Township, Hamilton County, Ohio, in the City of Cincinnati, and fronting on the canal twenty-seven (27) feet in width and fronting the center of the old road thirty-five (35) feet by about one hundred and ten (110) feet long on the east side of said lot from the canal to a line fifteen (15) feet from the center of the old vacated Hamilton road, now recognized as a street forty-five (45) feet in width.

That said property be conveyed clear and free of the liens and interests of the defendants the Cleveland Building Association Company, Joseph Rehkamp and Sophia Menke, and that the purchaser shall pay the taxes due and payable December 20, 1912, and thereafter; that Ralph E. Clark, trustee, hold the funds for further orders of this court.

**Form No. 165****Entry Allowing Fees to Trustee**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt.

*Entry Allowing Fees to Trustee*

This cause coming on to be heard upon application of ———, trustee, for fees in the above matter, ten days' due notice having been given to creditors, it is hereby ordered that ———, trustee, be allowed a fee of three hundred and sixty-five (\$365) dollars, to be paid out of the assets in his hands.

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**Form No. 166****Final Account of Trustee in Bankruptcy**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt.

*Oath to Final Account of Trustee*

On this ——— day of August, 1913, before me, comes Ralph E. Clark, of Cincinnati, in the County of Hamilton and State of Ohio, and makes oath, and says that he was, on the ——— day of ———, 1912, appointed trustee of the estate and effects of the above named bankrupt, and that as such trustee he has conducted the settlement of the said estate. That the account hereto annexed, marked with the letter "A," is true, and such account contains entries of every sum of money received by said trustee on account of the estate and effects of the above named bankrupt, and that the payments purporting in such account to have been made by said trustee have been

so made by him. And he asks to be allowed for said payments and for commissions and expenses as charged in said accounts.

———, Trustee.

Subscribed and sworn to before me at Cincinnati, in said Southern District of Ohio, this ——— day of August, A. D. 1913.

“A”—ACCOUNT OF TRUSTEE

The estate of Henry Menke, bankrupt, in account with Ralph E. Clark, trustee.

1912

Dr.

June 7.	To Ralph E. Clark, receiver....	\$ 292.73
	To Joseph Rehkamp, sale r. est.	2,950.00
	To Edward Albiez, sale r. est....	4,800.00
	To Bernard Menke, sale pers....	294.00
	To Collections and earnings, trustee .....	526.68
	To Sales personal property.....	320.09
	To Ralph E. Clark (redeposited fee from Dilley, clerk, because included in check Dec. 6, voucher No. ———.....	5.00

Voucher

No. 1912

Cr.

1—June 12.	Bishop Rigging Co., repairs.	\$ 8.50
2—June 20.	Treasurer Hamilton County, taxes .....	60.15
3—July 11.	Jos. H. Toelke, insurance..	13.00
4—July 27.	City Water Works.....	6.10
5—Sept. 14.	Albert W. Schell, insurance.	26.55
6—Nov. 7.	Ezekiel & Bernheim, auc- tioneers. ....	402.35
7—Nov. 7.	Ezekiel & Bernheim, auc- tioneers. ....	206.05
8—Dec. 6.	The Cleveland Building As- sociation Co., payment lien.	5,000.00



1890

## CLARK ON RECEIVERS

## Voucher

No. 1912

Cr.

9—Dec.	6.	Ralph E. Clark, trustee's fee .....	\$ 365.00
10—Dec.	10.	Ralph E. Clark, receiver's fee .....	360.00
11—Dec.	10.	B. E. Dilley, clerk, costs...	38.72
1913			
12—Feb.	26.	Cleveland Building Association Co., payment lien.....	1,886.96
13—Mar.	7.	Sophie Menke, dower.....	220.80
14—May	9.	Charles T. Greve, referee..	100.43
15—May	9.	Burton P. Hollister, attorney's fee .....	250.00
16—May	9.	Joseph H. Hart, appraiser's fee .....	15.00
17—May	9.	Glen Brown, appraiser's fee	15.00
18—May	9.	W. B. Poland, appraiser's fee .....	15.00
19—May	9.	Vinton R. Shepard, advertising .....	26.30
20—May	9.	John Doyle, premium, trustee's bond .....	19.00
21—May	9.	J. A. Orr, storage.....	16.96
22—May	9.	Emma Grischy, stenographer .....	15.00
23—May	9.	John Herman, attorney for petitioning creditors .....	50.00
24—May	9.	Nelson & Hickenlooper, court costs and attorneys' fees in case No. 4387, Insolvency Court, Hamilton County, O.	71.63
			<hr/>
			\$9,188.50
			<hr/>
			\$9,188.50

**Form No. 167****Entry Ordering Payment to Mortgagee**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt.

*Entry Ordering Payment to the Cleveland Building  
Association Company*

This cause coming on to be heard upon application of the Cleveland Building Association Company, mortgagee in the above cause, for an order for distribution to it, ten days' due notice having been given to creditors, the trustee, Ralph E. Clark, is hereby ordered to pay to the Cleveland Building Association Company two thousand (\$2,000) dollars on account of its mortgage claim against the Menke property known as 295 and 297 West McMicken Ave., and three thousand (\$3,000) dollars on account of its mortgage claim against the property known as 2008 and 2009 Mohawk Place, and the said company is hereby ordered to give to Ralph E. Clark, trustee, proper receipts for the same.

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**Form No. 168****Entry Ordering Payment to Mortgagee (Another Form)**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. No. 4916

In the Matter of Henry Menke, Bankrupt.

*Entry Ordering Payment in Full to the Cleveland Building  
Association Company*

This cause coming on to be heard upon application of the Cleveland Building Association Company, mortgagee in the above cause, for an order for payment in full of its mortgage claim, ten days' notice having been given to creditors, the

trustee, Ralph E. Clark, is hereby ordered to pay the Cleveland Building Association Company \$731.28 on account of its mortgage claim against the Menke property known as 295, 297 West McMicken Ave., Cincinnati, Ohio, and \$1,176.48 in full of said company's mortgage claim against the property known as 2008, 2009 Mohawk Place, and the said company is hereby ordered to give to Ralph E. Clark, trustee, proper receipts in full for said amounts and to release said mortgages of record.

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### **Form No. 169**

#### **Deed of Trustee in Bankruptcy**

Know all men by these presents, that, whereas, on May 7, 1912, Henry Menke was adjudged a bankrupt by the District Court of the United States for the Southern District of Ohio, Western Division, and Ralph E. Clark was duly appointed and qualified as trustee of the estate of said Henry Menke in bankruptcy and is now acting as such trustee, and on June 20, 1912, said trustee filed a petition in said District Court of the United States for the Southern District of Ohio, Western Division, praying, among other things, for an order of sale for said real estate therein mentioned and hereinafter described; and

Whereas, proceedings were had on said petition in accordance with the bankruptcy laws of the United States in such cases made and provided, and the petition coming on for hearing on July 24, 1912, of which hearing ten days' notice had been given by mail to said creditors of said bankrupt, it was ordered that said trustee be authorized to sell at public auction the portion of the bankrupt's estate specified in his petition and hereinafter described, keeping a correct account of the property sold and the price received therefor and to whom sold, and on the same day, in pursuance of said order and judgment, an order of sale of said real estate therein described

was issued out of said court under the seal thereof to the said Ralph E. Clark, trustee of the estate of Henry Menke, in bankruptcy, as aforesaid directed, commanding him to execute said order and of the same, together with his proceedings thereon, to make due return to said court; and

Whereas, said Ralph E. Clark, trustee of the estate of Henry Menke in bankruptcy, having caused said premises to be appraised and the report of said appraisement to be filed with Charles T. Greve, referee, and having, on August 27, 1912, returned said order of sale to said court, as commanded, with the proceedings thereon, stating in substance that, in obedience to said order, he did, on June 24, 1912, hold a public auction on the premises, but that the property hereafter referred to was not sold, and that, on September 10, 1912, due notice to creditors having been given, the said Charles T. Greve, referee in bankruptcy, ordered a second auction sale to be made October 14, 1912, on the premises, and the same was so held, Edward Albiez bidding for the premises the sum of forty-eight hundred (\$4,800) dollars, which was the highest bid offered; and

Whereas, on October 17, 1912, the said court having examined the proceedings of the said sale aforesaid, under said order of sale, and it appearing to the court that said sale was in all respects legally made, ordered that the same be approved and confirmed, and that said Ralph E. Clark, trustee as aforesaid, should execute and deliver a proper deed to Edward Albiez of the real estate so sold, all of which will more fully appear by the records of said court, to which reference is here made;

Now, therefore, I, the said Ralph E. Clark, trustee of the estate of Henry Menke in bankruptcy aforesaid, by virtue of said order of sale and confirmation and of the statutes in such cases made and provided and of the powers vested in me, and for and in consideration of the premises and of the sum of forty-eight hundred (\$4,800) dollars to me paid by the said Edward Albiez, the receipt whereof is hereby acknowledged,

do hereby grant, bargain, sell and convey to the said Edward Albiez, his heirs and assigns forever, the following real estate situated in the County of Hamilton, State of Ohio, City of Cincinnati, known as Nos. 2007 and 2009 Mohawk Place:

Being lots numbered 1 and 2 in the subdivision of lots numbered 31 and 32 made by Joseph Cooper, sheriff of Hamilton County, Ohio, said lots fronting forty-five and one-half ( $45\frac{1}{2}$ ) feet on the north side of Mohawk Place (formerly Hamilton Road), and extending northwardly eighty (80) feet, more or less, to the northwest line of said lot; being the same premises also known as Lot No. 31 in a plat of subdivision made by Wm. R. Morris and Samuel W. Goodin and recorded in Deed Book 92, page 165, Hamilton County, Ohio, records; being the same premises conveyed to Henry and Bernard Menke by deed from the Mohawk Place Loan & Building Company, recorded in Deed Book 953, page 4, Hamilton County records.

To have and to hold the said premises, with all the privileges and appurtenances thereunto belonging, to said Edward Albiez, his heirs and assigns forever, as fully and completely as he, the said Ralph E. Clark as such trustee in bankruptcy, by virtue of said order of sale, confirmation thereof and of the statutes made and provided in such case, might and should sell and convey the same.

In witness whereof, the said Ralph F. Clark, as such trustee, has hereunto set his hand this —— day of ——, 1912.

——, Trustee of the Estate of Henry Menke, Bankrupt.

Signed and acknowledged in the presence of:

\_\_\_\_\_  
\_\_\_\_\_

State of Ohio, Hamilton County, ss.:

Be it remembered that, on the —— day of ——, 1912, before me, the subscriber, a notary public in and for said county, personally came the above-named Ralph E. Clark, as trustee of the estate of Henry Menke in bankruptcy, the grantor in the

foregoing deed, and acknowledged the signing of the same to be his voluntary act and deed as such trustee, for the uses and purposes therein mentioned.

In witness whereof, I have hereunto subscribed my name and affixed my official seal on the \_\_\_\_\_ day of \_\_\_\_\_, 1912.

\_\_\_\_\_, Notary Public, Hamilton County, Ohio.

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## Form No. 170

### Intervening Petition in Bankruptcy Proceedings \*

#### *Intervening Petition of The Cincinnati Railway Supply Company*

To the Honorable H. C. Hollister, Judge of the United States District Court in and for the Southern District of Ohio, Western Division:

The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, citizen of said state, and having its principal place of business in Cincinnati, in said state, leave having been first obtained to intervene in this cause, presents this its intervening petition to this honorable court and says:

1. That on February 1, 1911, it sold and delivered to said the Platt Iron Works Company the following chattel property, viz.: 290 ingots of copper, containing 6,438 pounds, average weight of each ingot being about 22 pounds, described as "Isle Royal Lake Copper," each of said ingots being marked with the letters, "B. E. R.," cast in the copper; that said sale and delivery of said copper were made upon the precedent condition, and in consideration that said the Platt Iron Works Company would pay to your petitioner, upon the delivery

\* Record and Briefs No. 2549. United States Circuit Court of Appeals for the Sixth Circuit. The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, Appellant, v. J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, as Trustees in Bankruptcy of The Platt Iron Works Company, Appellees.

thereof, the sum of \$836.94, in cash; that, notwithstanding the delivery thereof by your petitioner as aforesaid, said the Platt Iron Works Company failed to comply with said condition, and wholly failed and refused to pay your petitioner said sum of \$836.94, or any part thereof, by reason of which your petitioner was compelled to and did rescind such sale, and demanded the return of its said property; that your petitioner is entitled to the immediate possession of its said property above described, and that said the Platt Iron Works Company wrongfully detains the same, and has so detained the same ever since February 1, 1911, to plaintiff's damage in the sum of \$836.94.

2. Your petitioner further says that on February 8, 1911, it sold and delivered to said the Platt Iron Works Company the following chattel property, viz.: 240 ingots of copper containing 4,608 pounds, average weight of each ingot being 20 pounds, described as "Isle Royal Lake Copper," each of said ingots being marked with the letters, "B. E. R." cast in the copper.

Also six ingots of tin, containing 677 pounds, average weight of each ingot being 113 pounds, the same being marked with stencil, "Straits Settlements;" that said sale and delivery of said copper and tin were made upon the precedent condition and in consideration that said the Platt Iron Works Company would pay to your petitioner, upon delivery thereof, the sum of \$900.31 in cash; that, notwithstanding the delivery thereof, by your petitioner as aforesaid, said the Platt Iron Works Company failed to comply with said condition, and wholly failed and refused to pay your petitioner said sum of \$900.31, or any part thereof, by reason of which your petitioner was compelled to and did rescind such sale, and demanded the return of its said property; that your petitioner is entitled to the immediate possession of its said property above described, and that said the Platt Iron Works Company wrongfully detains the same and has so detained the same ever since said February 8, 1911, to plaintiff's damage in the sum of \$900.31.

3. Your petitioner further says that on February 16, 1911, it sold and delivered to said the Platt Iron Works Company the following chattel property, viz.: 180 ingots of copper, containing 3,628 pounds, average weight of each ingot being about 20 pounds, described as "Isle Royal Lake Copper," each of said ingots being marked with the letters, "B. E. R.," cast in the copper; that said sale and delivery of said copper were made upon the precedent condition and in consideration that said the Platt Iron Works Company would pay to your petitioner, upon the delivery thereof, the sum of \$471.64 in cash; that notwithstanding the delivery thereof, by your petitioner as aforesaid, said the Platt Iron Works Company failed to comply with said condition, and wholly failed and refused to pay your petitioner said sum of \$471.64, or any part thereof, by reason of which your petitioner was compelled to and did rescind such sale, and demanded the return of its said property; that your petitioner is entitled to the immediate possession of its said property above described, and that said the Platt Iron Works Company wrongfully detains the same, and has so detained the same ever since said February 16, 1911, to plaintiff's damage in the sum of \$471.64.

4. Your petitioner further says that on February 21, 1911, it sold and delivered to said the Platt Iron Works Company the following chattel property, viz.: 150 ingots of copper, containing 3,016 pounds, average weight of each ingot being about 20 pounds, described as "Isle Royal Lake Copper," each of said ingots being marked with the letters, "B. E. R.," cast in the copper; that said sale and delivery of said copper were made upon the precedent condition and in consideration that said the Platt Iron Works Company would pay to your petitioner, upon the delivery thereof, the sum of \$392.08, in cash; that, notwithstanding the delivery thereof by your petitioner as aforesaid, said the Platt Iron Works Company failed to comply with said condition, and wholly failed and refused to pay your petitioner said sum of \$392.08, or any part thereof, by reason of which your petitioner was compelled to and did



rescind such sale, and demanded the return of its said property; that your petitioner is entitled to the immediate possession of its said property above described, and that said the Platt Iron Works Company wrongfully detains the same, and has so detained the same ever since said February 21, 1911, to plaintiff's damage in the sum of \$392.08.

5. Your petitioner further states that on June 29, 1911, it instituted, in the Court of Common Pleas of Montgomery County, Ohio, an action in replevin against said the Platt Iron Works Company, being cause No. 33026 on the docket of said court, for the recovery of all the property described in paragraphs 1, 2, 3 and 4 above; that said action is still pending and undetermined, and that by an order entered in this cause by this honorable court, as hereinafter set forth, all further proceedings in said replevin suit have been enjoined, and your petitioner restrained from taking any action for the recovery of its property, or for such other relief as in law or in equity it may be entitled to.

6. Your petitioner further states that on July 24, 1911, a petition in bankruptcy was filed in this court by the Randolph-Clowes Company et al., against said the Platt Iron Works Company, and thereupon, on said day, this court appointed George R. Young and Dickson Boardman receivers of said the Platt Iron Works Company and of all its property and estate, real, personal and mixed, of whatsoever kind and description and wherever situated, with direction to said receivers to take immediate possession thereof, and in their discretion to continue, in whole or in part, the business of said the Platt Iron Works Company; and it was ordered that all persons, firms, corporations, creditors, marshals, sheriffs and other officers be restrained from prosecuting, exacting or suing out any summons, suit, attachment, reclamation, or other writ of possession for the purpose of taking possession, impounding or interfering with said property or estate, or any part thereof, or from molesting, disturbing or interfering with the receivers' acquisition of possession, or possession of the same; that

said George R. Young and Dickson Boardman, duly qualified as such receivers, and entered upon the discharge of their duties, and are now in the possession of the assets, property and business of said the Platt Iron Works Company, including the property of your petitioner above described, and that your petitioner desires to recover the possession of its property herein described.

Wherefore, your petitioner prays this honorable court for an order directing said George R. Young and Dickson Boardman, receivers of said the Platt Iron Works Company as aforesaid, or such other officer or officers of this honorable court as shall, at the time of making such order, be in possession thereof, to turn over and deliver to your petitioner its property described in paragraphs 1, 2, 3 and 4 above, or, if said property has been sold by said the Platt Iron Works Company, or by said receivers, that the money now in the hands of said receivers, or which may be due to them from the purchasers of said property arising from the sale thereof, to the extent of the amount due your petitioner as aforesaid, may be ordered paid to your petitioner; that said George R. Young and Dickson Boardman, as receivers aforesaid, or such other officer or officers of this honorable court as may then be in possession of the assets and property of said the Platt Iron Works Company, may be made parties to this proceeding, and that they may be required to show cause why your petitioner should not be granted the relief herein prayed for; and that your petitioner may have all such other and further relief as may be equitable and just, and your petitioner will ever pray.

Frank O. Suire and Wm. J. Rielly, Attorneys for said  
Petitioner.

(Duly verified.)

**Form No. 171****Answer of Trustee in Bankruptcy to Intervening Petition \***

*Answer of the Trustees in Bankruptcy of the Platt Iron Works  
Company to the Intervening Petition of the Cincinnati  
Railway Supply Company*

(Filed May 17, 1912)

For answer to the intervening petition of the Cincinnati Railway Supply Company, on file herein, the undersigned, J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, say that they are trustees in bankruptcy of the Platt Iron Works Company, which, since the filing of said intervening petition, has been adjudicated a bankrupt herein, and that they have been duly appointed and qualified and are now acting as such trustees.

Said trustees admit the incorporation of said intervening defendant, the Cincinnati Railway Supply Company, as averred in said intervening petition.

And for their defense to the first, second, third and fourth causes of action in the intervening petition set forth said trustees admit that said the Cincinnati Railway Supply Company sold and delivered to said the Platt Iron Works Company the chattel property in said causes of action mentioned at the times therein stated, and for the prices therein set forth, which are wholly unpaid, and that after said chattel property (said copper) had been manufactured into castings by said company, so that neither the same nor the castings made from same could any longer be identified, but not earlier, said the Cincinnati Railway Supply Company demanded the return of said chattel property.

But said trustees deny each and every other allegation in said causes of action continued.

\* Record and Briefs No. 2549. United States Circuit Court of Appeals for the Sixth Circuit. The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, Appellant, v. J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, as Trustees in Bankruptcy of The Platt Iron Works Company, Appellees.

Said trustees admit the truth of the statements set forth in the fifth and sixth paragraphs of said intervening petition.

They accordingly ask that the relief prayed for by said intervening petition may be denied, and that it may be found and declared to be merely a general unsecured creditor of said the Platt Iron Works Company, and that they may be dismissed as against such intervening petition, and may have such other relief as is proper.

J. F. Hartlieb, Hugo Victor, A. Clifford Shinkle, as  
Trustees in Bankruptcy of the Platt Iron Works  
Co.

By Geo. R. Young, their Counsel.

(Duly verified.)

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## Form No. 172

### Reply of Intervenor in Bankruptcy Proceedings \*

*Reply of Cincinnati Railway Supply Company to Answer of  
Trustees in Bankruptcy to its Intervening Petition*

(Filed May 22, 1912)

1. Now comes the Cincinnati Railway Supply Company, intervening petitioner herein, and by way of reply to the defense of J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, trustees in bankruptcy of the Platt Iron Works Company to the first, second, third and fourth causes of action in its intervening petition herein, says it denies that no demand was made by it for the return of the chattel property referred to in said answer described in its intervening petition herein until after said chattel property had been manufactured into castings by said the Platt Iron Works Company, and denies each and every other allegation contained in said answer, which is not an admission of the allegations of its intervening petition.

\* Record and Briefs No. 2549. United States Circuit Court of Appeals for the Sixth Circuit. The Cincinnati Railway Supply Company, a corporation under the laws of Ohio, Appellant, v. J. F. Hartlieb, Hugo Victor and A. Clifford Shinkle, as Trustees in Bankruptcy of The Platt Iron Works Company, Appellees.

2. For further reply to the defense of said trustees to said first, second, third and fourth causes of action in its intervening petition, said the Cincinnati Railway Supply Company states that said the Platt Iron Works Company, notwithstanding the terms on which said chattel property was sold to it by this intervening petitioner, as heretofore alleged, and with full knowledge of the fact that, under the terms of said sale, it had no right of title to said chattel property until payment was made by it therefor, without making such payment, and without the consent of this intervening petitioner, converted said property to its own use shortly after the delivery thereof to it by this intervening petitioner, and repeatedly thereafter represented to this intervening petitioner that payment would be made to it, and that any delay in the institution of proceedings by this intervening petitioner for the recovery of its property, or such relief and equity it is entitled to, was caused by the acts and conduct of said the Platt Iron Works Company in representing to this intervening petitioner that it was able to and would make payment for said chattel property in accordance with its agreement.

Suire & Rielly, Attorneys for said Petitioner.

(Duly verified.)

## FORMS RELATING TO RECEIVERS' CERTIFICATES

**Form No. 173****Report and Petition of Receiver of Irrigating Plant for  
Receiver's Certificates**

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL  
CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA. No. 11950

Atlantic Trust Company, Plaintiff,

v.

Woodbridge Canal & Irrigation Company et al., Defendants.

*Report and Petition of Receiver*

(Filed January 31, 1895)

Now comes Edgar C. Chapman, receiver in the above-entitled cause, and respectfully reports unto the court that he has made diligent effort under the order made by the court in this cause on January 23, 1895, to raise the money authorized by said order, or some parts thereof, for the purpose of paying the expenses of managing and caring for the property in his hands as such receiver, but has been, and is unable to raise any money whatever on the choses in action and securities in his hands, and is unable to raise any money upon any of the personal assets in his hands as such receiver; that upon investigation he finds that all of the notes in his hands purport to be secured by mortgage on real estate, but that in each and every case except three the mortgages given to secure said notes are second or third mortgages upon the property described therein, and that the encumbrances prior to the mortgages so held by the receiver are so great that he is unable to negotiate or hypothecate the security, or any part thereof; that as to the three notes which are secured by first lien upon real estate, they are all made in the year 1894, for small sums, and run for ten years, with interest at six per cent. per annum, and that he is unable to raise any money whatever upon said notes. Said receiver further reports that he is now actually indebted

in the sum of about seventeen hundred (\$1,700) dollars for work and labor necessarily employed in the care of said property; that all his employes threaten to leave unless promptly paid; that there are about twenty thousand (\$20,000) dollars of outstanding time certificates given by the defendant corporation for work, labor and material furnished prior to the appointment of this receiver, and that the standing and credit of said defendant is such that men refuse to work, even for this receiver, without prompt payment of their wages, by reason whereof this receiver will be entirely unable to manage and care for the said property, to protect it from damage and loss, or to preserve defendant's title to water rights, unless he can be immediately placed in funds necessary to pay the expenses thereof; that in addition to the amount of indebtedness aforesaid, he has been compelled to, and he and his counsel have made advances for personal expenses, court fees and on account of work and labor aforesaid considerably in excess of all moneys received by him as such receiver; that since the date of his last report no money has come into his hands as such receiver; that there is nothing outstanding upon which he can make collections; that everything that was available upon which money could be readily realized had been hypothecated before this receiver was appointed, and that he knows of no source of income from which money can be derived earlier than the month of June or July next.

Wherefore, this receiver again applies to the court and prays the court to grant an order authorizing him to borrow, for the purpose of paying the expenses of caring for and managing the property now in his hands as such receiver, and as necessary expenses as such receiver, such sum of money as to the court shall seem just, not less than the sum of five thousand (\$5,000) dollars, and to issue therefor receiver's certificates, which shall be and constitute a first lien upon and preferred claim against the mortgaged property described in the complaint in this cause, to be paid out of the proceeds of any sale made in this

cause, or out of any other funds that shall come into the hands of this receiver applicable thereto.

And this receiver will ever pray, etc.

E. C. Chapman, Receiver.

Fox, Kellogg & Gray, Attorneys for Receiver.

Dated January 30, 1895.

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## Form No. 174

### **Petition of Receivers to Issue Receivers' Certificates for Additions and Improvements \***

(Filed May 27, 1912)

UNITED STATES OF AMERICA, THE DISTRICT COURT OF THE  
UNITED STATES FOR THE EASTERN DIVISION OF MICHIGAN,  
SOUTHERN DIVISION. IN EQUITY

American Brakeshoe & Foundry Company, Complainant,  
v.  
Pere Marquette Railroad Company, Defendant.

*To the District Court of the United States for the Eastern  
District of Michigan, Southern Division, in Equity:*

We, the undersigned, the receivers of the Pere Marquette Railroad Company, respectfully show unto the court:

Since our appointment on April 5, we have personally examined all or a large part of the mileage and property constituting the Pere Marquette system; and have carefully considered its condition and requirements.

We found the physical condition of the property, on the whole, to be excellent.

We have inquired specially into the matter of additions and improvements made in recent years, and the requirements of the system as to further expenditures for additions and improvements.

\* Petition taken from Record and Briefs Case No. 2442, United States Circuit Court of Appeals, Sixth District.



Since March 1, 1911, out of the proceeds of the five-year notes issued on that date, upwards of \$2,800,000 has been expended, almost entirely within the State of Michigan, for double tracking, engine house facilities, yard facilities, side tracks, improvements in grades, and other additions and betterments. During prior periods the expenditures for additions and betterments have been considerable. In the fiscal year ending June 30, 1908, they were about \$800,000, and in the following fiscal year, about \$150,000, and in the next following fiscal year, about \$700,000. But notwithstanding the large sums of money expended on the property during the last five years and the purchase during the same time of a large amount of equipment in addition, on time contracts, we have reached the conclusion, after careful study of the subject, that the following additional expenditures should be made, for the general betterment of the system:

For new rail .....	\$ 525,000
For new equipment .....	775,000
For new engine houses .....	150,000
For new coaling plants .....	100,000
For new yards .....	100,000
For new depots .....	50,000
<hr/>	
Total .....	\$1,700,000

In "Exhibit A" hereto attached, will be found details.

During the twelve months ending April 30, 1913, it will be necessary to meet matured and maturing payments of principal aggregating about \$1,800,000 on equipment heretofore purchased, such payments being secured by first liens on a large amount of equipment absolutely necessary to the continuance of the railroad operations, such liens covering about 8,900 box cars, about 3,200 other freight cars, about 187 locomotives, about 85 passenger train cars, also 3 car ferries, besides other equipment.

It will not be possible, out of the earnings of the system, to make the proposed expenditures and to meet all the payments of principal above referred to and yet meet the payments of interest on underlying bonds necessary to preserve the system from dismemberment. Undoubtedly there is some mileage which is not only unprofitable but perhaps burdensome to the system, but it can not be segregated from the system allowing any of the underlying mortgages to be enforced, as each of the same covers mileage essential to the system. We regard it as highly important to all concerned—the public as well as the security holders—that the earnings be applied so far as necessary to the payment of the interest on the underlying bonds so as to prevent any dismemberment of the system. The several divisions on which the underlying bonds are liens, have been operated as one system for over ten years; during that time the distinction between them has been regarded as unimportant in the expenditures of the company for improvements, the construction of shops, engine houses, terminal facilities, etc.; such a dismemberment would doubtless cause serious controversies concerning the ownership of terminal properties at junction points and would require much new construction of terminal and other facilities; a large amount of subordinate securities have been purchased in good faith and for cash on the strength of liens on the system as a whole; the shipping public has become adjusted to the operation of the property as a single system; and it is quite clear to us that it would be contrary to the best interests of the public as well as disastrous to a large body of bona fide security holders to permit any dismemberment of the system such as might follow a default on any of the underlying bonds. Moreover, the earnings of the system as carefully estimated, will be ample to cover and we believe should be used as far as necessary to pay the interest on such underlying bonds, as well as taxes, rentals, and interest on equipment obligations and on receivers' certificates.

Accordingly we recommend that the expenditures above mentioned for new rail, new equipment, etc., aggregating about

\$1,700,000, and the said payments of principal on equipment obligations aggregating about \$1,800,000 be covered by the issue of \$3,500,000 of receivers' certificates; and that the court authorize the issue of the same and also authorize the payment from time to time, out of earnings, of the interest on the underlying bonds—including the so-called consolidated mortgage four per cent. bonds of 1901—as well as the interest on the outstanding equipment obligations. A list of the underlying bonds referred to, is hereto attached marked "Exhibit B." A list of the equipment obligations referred to, is hereto attached marked "Exhibit C."

The plan will leave unprovided for at present the interest to mature on securities aggregating upwards of \$24,000,000 in par value as per list "Exhibit D" which, so far as we know, represent bona fide investments of a large number of people who are entitled to full consideration. We have inquired diligently into the matter of all securities issued by the company during the last five years (and in that time a large part of the securities included in "Exhibit D" were issued) and we are satisfied that they were properly issued and that the railroad company received full value for the same. But pending more certain indications of improvement in net earnings, for which we hope as a result of the improvements made and to be made, we do not recommend the payment of the interest to mature on these securities.

We recommend that the receivers' certificates be made a lien on all of the property of the defendant within the states of Michigan, Ohio and Indiana, subordinate to the underlying bonds set forth in "Exhibit B" (except the said consolidated mortgage bonds of 1901) and paramount to all other liens on such property; that such certificates be also made a first lien of the \$775,000, or thereabouts of new equipment proposed to be purchased, and an ultimate first lien to the amount of \$650,000 on the equipment which now secures the \$650,000, final principal payment due September 1, 1912, included in the payments of principal hereinbefore referred to; and that

such receivers' certificates be made also a general charge against all the receivership funds and all the defendant's property; also that the said receivers' certificates be made payable in not exceeding three years and bear interest at the rate of five per cent. per annum, payable semiannually, and be redeemable on any interest date at a premium of one per cent.; also that all said certificates be of one series but issued from time to time as required; also that the receivers in their discretion be authorized to sell or dispose of all or any of said certificates, or to exchange all or any of the same for the principal equipment obligations referred to, or to apply all or any of the same to the payment of the new purchases and work referred to, as the receivers shall deem for the best interests of the receivership estate.

The receivers pray for an order or orders in accordance with the foregoing report and recommendations.

Frank W. Blair, Dudley E. Waters, Newman Erb.

Henry M. Campbell, Counsel for Receivers.

State of Michigan, County of Wayne, ss.:

Frank W. Blair, Dudley E. Waters and Newman Erb, being duly sworn, do depose and say, each himself, that he is one of the receivers of the Pere Marquette Railroad Company, appointed in this cause; that he has read the foregoing report and petition by him subscribed and knows the contents thereof; and that the same is true to the best of his knowledge and belief.

Frank W. Blair, Dudley E. Water, Newman Erb.

Subscribed and sworn to before me this day, May 27, 1912.

Harry Slater, Notary Public, Wayne County, Michigan.

My commission expires June 4, 1913.

**Form No. 175****Petition of Receivers for Authority to Purchase and Issue  
Receivers' Certificates**

DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF  
OHIO, WESTERN DIVISION. IN EQUITY. No. 41

The Bankers' Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

*Petition of Receivers for Authority to Purchase Equipment and  
Issue Receivers' Certificates*

To the Judges of the District Court of the United States, for  
the Southern District of Ohio, Western Division:

Judson Harmon and Rufus B. Smith, heretofore appointed  
and qualified as receivers in this cause, respectfully state that  
the railway of the defendant company is in great need of  
additional equipment, and that the economical, efficient and  
successful management of said railway and the discharge of  
its duties to the public, will be greatly promoted by the  
acquisitions of such additional equipment.

Your petitioners state that no equipment has been acquired  
by the defendant since the year 1910, when there were pur-  
chased by it, 5 Pacific type locomotives, 20 consolidated loco-  
motives, 1,500 steel coal cars, and 1,000 steel underframe box  
cars. After said purchase, the defendant owned 260 loco-  
motives, 4,706 coal cars, 6,999 box and other freight cars and  
212 passenger cars. Since the purchase of said equipment in  
1910, it has been necessary to scrap and write off the books of  
the company, 28 locomotives, 1,003 coal cars, 1,703 box and  
other freight cars, and 17 passenger cars, leaving the following  
equipment owned by the defendant company, to wit: 232  
locomotives, a decrease of 10.7 per centum, 3,703 coal cars,  
and 5,296 box and other freight cars, a decrease in the total  
number of freight cars of 23.1 per cent. and 195 passenger  
cars, a decrease of 8 per cent.

In addition to the number of cars scrapped and written off, as aforesaid, the defendant now has 500 freight cars, which ought to be scrapped, because no longer fit for use. Of the 9,000 freight cars owned by the defendant, there is an average of approximately 1,200 cars per day awaiting repairs, leaving only about 7,800 cars owned by the defendant suitable for active service.

The business done by said defendant over its railroad has been steadily increasing. The fiscal year ending June 30, 1914, as compared with the fiscal year ending June 30, 1910, showed an increase in freight revenues of 10.3 per cent., and in the number of tons handled, an increase of 16.5 per cent. In order to meet the condition created by the decrease in its equipment, and the increase in its business, the defendant has been compelled in the operation of its road, and your petitioners are now compelled to rely to a large extent upon the cars of other railroad companies for the use of which cars, it and they have been obliged to pay a rental. The average number of freight cars in active service on defendant's railroad during the past fiscal year has been 11,800 per day, or 4,000 in excess of the number of cars owned by the defendant which are fit for service. The defendant and your petitioners have also been compelled to rent locomotives in the operation of defendant's railroad, the number so rented during the last fiscal year ending June 30, 1914, averaging about 60 a day.

In the fiscal year ending June 30, 1913, the defendant was obliged to pay for hire of equipment, in excess of the amount received by it from other railroads for the use made by them of the cars of defendant, six hundred fourteen thousand five hundred thirty-two and 34/100 dollars (\$614,532.34); and for the fiscal year ending June 30, 1914, nine hundred eighty-four thousand six hundred sixty-five and 83/100 dollars (\$984,665.83). In the four-year period beginning with the ending of the fiscal year of 1910, and ending with fiscal year 1914, there has been an increase in the debit balance of hire of equipment account, of 992 per cent.

Your petitioners in their operations of the said railroad have to meet the same general conditions as produced the foregoing results prior to their appointment and qualifications. Your petitioners have given orders that repairs be made as speedily as possible, to such of those freight cars as are out of repair and in a condition to justify the expenditure on them of the money necessary for that purpose. Such repairs, however, will relieve the situation to only a comparatively small extent. While the defendant, during the last fiscal year, has been able to rent cars and locomotives because there was a surplus of such equipment on the lines of other railroads, due to the fact that the railroad business of the country generally, was less than in a normal year, your petitioners are advised and believe that it would not be possible to do so readily, were the railroad business of the country at its normal stage, when other railroads would need all their locomotives and cars for conducting their own business.

The saving in the hire of equipment account, which would result from the acquisition of a reasonable amount of new equipment would, your petitioners believe, be more than sufficient to pay the interest on the cost and the amount chargeable to depreciation of such new equipment. Your petitioners with such equipment acquired, would be able to handle the business offered to them more economically and more promptly, and better able to increase the amount of business done over the lines of the defendant. Your petitioners reasonably anticipate in view of the increased freight traffic on defendant's line in the past, that there will be an increase in the future, provided your petitioners procure the necessary facilities for handling the business that may be secured.

During the said period of four years from June 30, 1910, to June 30, 1914, the passenger business of the defendant has slightly decreased, the decrease in total earnings being five per cent. during said period. Other railroads in direct competition with that of the defendant have, during that period, acquired new and modern passenger equipment of steel con-

struction, and it is necessary in order to meet the competition of those lines, that there be acquired for the defendant's railroad also, new and modern passenger cars of steel construction, that will be as attractive to the public as that in use by defendant's competitors.

For the reasons above stated, your petitioners are convinced that it is an imperative need of the defendant and of all those who have a financial interest in its property, that there be acquired additional equipment as soon as possible, and they are advised and believe that new equipment can now be acquired at lower prices than have prevailed for many years and than will obtain with the return of normal business conditions in this country.

Shortly after their appointment as receivers, your petitioners invited bids for the following equipment, which they are advised and believe is the minimum amount which should now be acquired, and is of the kind and character best adapted to meet the necessities of the business done on defendant's railway:

- 5 Passenger locomotives, Pacific type
- 30 Freight locomotives, Mikado type
- 1,000 Box cars
- 1,000 Hopper cars
- 12 Steel coaches
- 8 Steel passenger and baggage cars
- 4 Steel baggage and mail cars
- 5 Steel baggage cars
- 1 Dining car
- 1 Steam wrecking crane
- 1 Steam locomotive crane

The bids for said equipment have now been received, and as a result, your petitioners report that they are able to acquire all the foregoing equipment for the sum of approximately two million eight hundred fifty-three thousand dollars (\$2,853,000).

In addition to the aforesaid equipment, for which bids have been solicited and received from the manufacturers thereof,



it will be necessary for your petitioners to acquire one hundred and five (105) caboose cars to comply with the new laws relating to the construction of said caboose cars. These can be constructed at a minimum cost in the shops of your petitioners, it being estimated that the cost thereof will amount to approximately eighty-nine thousand two hundred fifty dollars (\$89,250).

There are no funds in the hands of your petitioners available for the purchase and construction of said equipment, and in order to acquire such funds, it will be necessary for them to borrow money on receivers' certificate, to be made a lien on the equipment so purchased and also a lien on all the other property of the defendant in the hands of your petitioners. Owing to the state of war prevailing abroad, and the consequent financial depression and uncertainties in this country, it will be necessary that the lien of said certificates be made superior to not only the lien of the complainant herein, defendant's first and refunding mortgage, but also superior to the lien of the other mortgages on defendant's railroad property, to wit:

Defendant's so-called general mortgage dated July 1, 1909, to the Central Trust Company of the City of New York;

The Cincinnati, Hamilton & Dayton Railroad Company's four and one-half per cent. mortgage, dated January 1, 1887, to the Farmers' Loan & Trust Company of New York;

The Cincinnati, Hamilton & Dayton Railroad Company's five per cent. general mortgage dated June 1, 1892, to the Mercantile Trust Company of New York, which said Mercantile Trust Company has been succeeded as trustees under such mortgage by the Bankers Trust Company of New York;

The Cincinnati, Dayton & Ironton Railroad Company's five per cent. first mortgage to the Central Trust Company of New York, dated May 1, 1891;

The Cincinnati, Dayton & Chicago Railroad Company's four per cent. first mortgage to the Continental Trust Company of New York, dated April 1, 1892, said Continental

Trust Company having now been succeeded by the New York Trust Company as successor in trust under said mortgage.

Your petitioners pray that a time be fixed for the hearing of this petition, and that said complainant, the Bankers Trust Company, trustee under defendant's first and refunding mortgage, the Central Trust Company of New York, trustee under defendant's general mortgage dated July 1, 1909, the Farmers Loan & Trust Company, trustee under the Cincinnati, Hamilton & Dayton Railway Company's four and one-half per cent. mortgage, the Bankers Trust Company, trustee under the Cincinnati, Hamilton & Dayton Railroad Company's general mortgage of June 1, 1892, the Central Trust Company of New York, trustee, under the Cincinnati, Dayton & Ironton Railroad Company's first mortgage, and the New York Trust Company, trustee under the Cincinnati, Dayton & Chicago Railroad Company's first mortgage, may each be notified of the filing of this petition, and of the time set for hearing thereof, and that on said hearing your petitioners may be authorized to purchase and construct the equipment aforesaid, or such part thereof as may seem to this court advisable, and that your petitioners be authorized to issue their certificates of indebtedness to the amount of the cost thereof, to be a first lien upon the equipment so purchased, and a first lien upon all the property of the defendant in their possession prior to the lien of each of the mortgages aforesaid, said certificates to bear such interest, to be payable at such times, and be sold for such prices as may be determined and ordered by this court and for all other necessary and proper orders in the premises.

(Signed) Judson Harmon, Rufus B. Smith, Receivers  
of the Cincinnati, Hamilton & Dayton Railway  
Company.

Morison R. Waite, Solicitor for Receivers.

State of Ohio, Hamilton County, ss.:

Judson Harmon and Rufus B. Smith, being first duly sworn, depose and say they are, as receivers of the Cincinnati, Hamil-

ton & Dayton Railway Company, petitioners in the foregoing petition, and that the allegations therein contained are true, as they verily believe.

Judson Harmon, Rufus B. Smith.

Sworn to and subscribed before me in my presence this 10th day of September, 1914.

[SEAL]

E. J. Boos, Notary Public.

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### Form No. 176

#### Entry Authorizing Hearing on Petition to Issue Receivers' Certificates \*

(Filed May 27, 1912)

UNITED STATES OF AMERICA, THE DISTRICT COURT OF THE  
UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN,  
SOUTHERN DIVISION. IN EQUITY. No. 2442

American Brakeshoe & Foundry Company, Complainant,

v.

Pere Marquette Railroad Company, Defendant.

#### *Order for Hearing on Receivers' Petition*

On reading and filing the petition of the receivers appointed herein, bearing date of May 27, 1912, having reference among other matters, to the issue of receivers' certificates for additions and improvements and to cover certain payments of principal maturing during the next twelve months on equipment obligations, and on motion of counsel for receivers.

It is ordered, that said petition be heard before this court at the courtrooms in the City of Detroit, on May 30, 1912, at the opening of court on that day or as soon thereafter as counsel may be heard.

It is further ordered, that a copy of said petition and this order be mailed or delivered to each of the following trustees

\* Taken from Record and Briefs Case No. 2442, United States Circuit Court of Appeals, Sixth Circuit.

in order that they may be given an opportunity to be heard upon the subject-matter of said petition, viz.:

Farmers Loan & Trust Company of New York, as trustee in the consolidated mortgage of the Pere Marquette Railroad Company dated January 2, 1901.

Central Trust Company of New York as trustee in the refunding mortgage of the Pere Marquette Railroad Company, dated January 2, 1905.

Bankers Trust Company of New York as trustee in the improvement and refunding general mortgage of the Pere Marquette Railroad Company, dated March 1, 1911.

It is further ordered, that a copy of said petition and this order be served upon the solicitors for the complainant and the solicitors for the defendant.

Approved for entry this 27th day of May, 1912.

Alexis C. Angell, District Judge.

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### Form No. 177

#### Order Authorizing and Directing Receiver to Borrow Money

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL  
CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA.

No. 11950

Atlantic Trust Company, Plaintiff,

v.

Woodbridge Canal & Irrigation Company et al., Defendants.

#### *Order Authorizing and Directing Receiver to Borrow Money*

This cause having come on regularly to be heard in its order on January 21, A. D. 1895, upon the application of Edgar C. Chapman, Esq., receiver heretofore appointed in this cause, for leave to borrow money for the purpose of paying expenses of the care and management of the property which has come into his hands as such receiver and of conducting

the business of the same as a going property; and upon due notice given to the plaintiff in said cause and to the defendant and also to the interveners in said cause, the plaintiff having failed to appear upon said hearing and the said interveners having appeared by the respective counsel and the said application having been heard upon the report and petition of said receiver and upon the evidence given in open court, and it appearing to the court that the said receiver is without funds with which to pay the necessary or any of the necessary expenses incurred or to be incurred by him as such receiver and that there is no present income from the said property, that the same is a going property, that the said receiver has already necessarily incurred expenses and thereby created indebtedness for such expenses in the care and management of said property to the amount of twelve hundred dollars or thereabout and that further expenses of such management and care must be continued from day to day in order to preserve the said property from waste or injury, and it appearing to the court that it is a proper case therefor, and the defendant in said cause consenting in open court thereto. It is by the court now here ordered that the said receiver, Edgar C. Chapman, be and he is hereby authorized and empowered as such receiver and for the purposes aforesaid, to wit, for the purpose of paying the expenses and indebtedness already incurred by him in the management of said property and of paying the continuing and accruing expenses of such management, to borrow the sum of five thousand (\$5,000) dollars to be used by him as such receiver for the purposes aforesaid and to be accounted for to the court from time to time, and to issue his certificate or certificates therefor payable out of any funds that may come into his hands as such receiver applicable thereto, with interest thereon at such rate as he shall find necessary in order to secure such loan but not to exceed eight per cent. per annum, and that he be and he is hereby authorized to hypothecate or assign any and so many of the notes and mortgages or other choses in action belonging

to the corporate defendant and which have come into his hands as such receiver as may be necessary as collateral security, for the payment of the certificate or certificates so issued by him with the interest thereon, with power to collect the moneys that may become due upon the notes and mortgages or choses in action so assigned and apply the same to the payment of the indebtedness evidenced by said certificate or certificates, the surplus, if any, to be returned to said receiver or the said notes, mortgages or choses in action so assigned as aforesaid to be reassigned to said receiver as such upon the payment of the indebtedness evidenced by the certificate or certificates aforesaid; and that the said receiver report to this court from time to time his doings under this order together with the amount of money which he may have realized thereunder and his disposition thereof.

Joseph McKenna, Judge.

(Endorsed) Filed Jan. 23, 1895. W. J. Costigan, Clerk.

By W. B. Beaizley, Deputy Clerk.

Dated this 23d day of January, A. D. 1895.

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## Form No. 178

### Order Authorizing Receiver to Borrow Money (Another Form)

(Entered by Judge Hollister, December 30, 1913)

This cause came on this day to be heard upon the application of Guy W. Mallon, receiver herein, for authority to borrow twenty thousand (\$20,000) dollars, of which sixteen thousand one hundred thirty-one and 59/100 (\$16,131.59) dollars is to be used by him in recovering from the Commercial Credit & Investment Company of St. Louis, Missouri, the possession and ownership of accounts receivable of said the Superior Portland Cement Company amounting to \$26,049.85 heretofore sold by said the Superior Portland Cement Company to said the Commercial Credit & Investment Company

of St. Louis and now held by it, the balance of said twenty thousand (\$20,000) dollars to be used by said receiver in paying to the treasurers of Scioto and Lawrence Counties, Ohio, the sum of four thousand, one hundred sixty-five and 69/100 (\$4,165.69) dollars now due to them as taxes on the real and personal property of said the Superior Portland Cement Company, and to pledge with the bank loaning said sum of twenty thousand (\$20,000) dollars as security therefor accounts receivable of said the Superior Portland Cement Company amounting to forty thousand (\$40,000) dollars, due notice of the time and place of the hearing of said application having been given to all parties in interest, and upon the evidence and was submitted to the court; on consideration whereof, the court being fully advised in the premises, finds that it is for the best interests of the creditors and stockholders of said the Superior Portland Cement Company that said application be granted.

It is therefore ordered, adjudged and decreed that said Guy W. Mallon, receiver herein, be and he is hereby authorized to borrow from the Fifth-Third National Bank of Cincinnati, the sum of twenty thousand (\$20,000) dollars on his negotiable promissory note to the order of said bank for said amount, bearing interest at the rate of not to exceed six per cent. per annum, payable on demand, and to pledge with said bank as security for the payment of said loan accounts receivable of said the Superior Portland Cement Company amounting (face value) to the sum of sixty thousand (\$60,000) dollars, and that said receiver be and he is hereby authorized to pay sixteen thousand one hundred thirty-one and 59/100 (\$16,131.59) dollars thereof to said the Commercial Credit & Investment Company of St. Louis, upon said company assigning and transferring to said receiver the accounts receivable of said the Superior Portland Cement Company now held by it in the said amount of twenty-six thousand and forty-nine and 85/100 (\$26,049.85) dollars, and upon said the Commercial Credit & Investment Company of St. Louis

delivering to him a surety company bond in the sum of ten thousand (\$10,000) dollars conditioned upon said company's making a true report and full settlement of the transactions between it and said the Superior Portland Cement Company, and conditioned further upon said company turning over to said receiver, free of charge, any moneys that may hereafter be paid to it or otherwise coming into its hands through payments on account of said book accounts or otherwise, and that said receiver be and he is hereby authorized to use the balance of said loan of twenty thousand (\$20,000) dollars in paying to the treasurers of said Scioto and Lawrence Counties, Ohio, the real and personal taxes now due upon the property of said the Superior Portland Cement Company amounting to said sum of four thousand one hundred sixty-five and 69/100 (\$4,165.69) dollars, or whatever amount may be determined upon as the exact amount of such taxes.

It is further ordered, adjudged and decreed that said the Fifth-Third National Bank of Cincinnati be and it is hereby subrogated to all the rights that said Counties of Scioto and Lawrence, Ohio, may have against said the Superior Portland Cement Company and its property and assets under and by virtue of their said claim for said taxes; that said bank have the right at any time during the period of said loan, or any renewal thereof, to require said receiver to exchange any of said accounts receivable that may be pledged to it as aforesaid for such other accounts receivable of equal face or par value as it may desire to have substituted therefor, and that nothing herein contained shall be construed to prevent said loan from being first paid out of any other property or assets of said the Superior Portland Cement Company, or from the first moneys coming into the hands of said receiver.



**Form No. 179****Order Authorizing Receiver to Borrow Money and Issue Receiver's Certificates.**

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL  
CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA. No. 11950

Atlantic Trust Company, Plaintiff,

v.

Woodbridge Canal & Irrigation Company et al., Defendants.

*Order Authorizing Receiver to Borrow Money and Issue  
Receivers' Certificates*

This cause having come on regularly to be heard in its order on February 6, A. D. 1895, upon the application of Edgar C. Chapman, Esq., receiver heretofore appointed in this cause, for leave to borrow money for the purpose of paying expenses of the care and management of the property which has come into his hands as such receiver and of conducting the business of the same as a going property; and upon due notice given to plaintiff in said cause, and to the defendant, and also to the interveners in said cause, the plaintiff appearing by Page & Eells their attorneys, the defendant appearing by Daniel Titus, its attorney, and the said interveners having appeared by W. M. Cannon, their counsel, and the hearing of said application having been continued from time to time, until this date and the said application having been heard upon the report and petition of said receiver, and upon the evidence given in open court, and it appearing to the court that the said receiver is without funds with which to pay the necessary or any of the necessary expenses incurred or to be incurred by him as such receiver, and that there is no present income from the said property, and that said receiver has been and is unable to raise any money under the order entered in this cause on January 23, 1895, and that the same is a going property; that the said receiver has already necessarily incurred expenses and thereby created indebtedness for such

expenses in the care and management of said property to the amount of about seventeen hundred dollars, and that further expenses of such management and care must be continued from day to day in order to preserve the said property from waste or injury, and it appearing to the court that it is a proper case therefor; and the plaintiff in said cause consenting in open court thereto, the defendant not objecting thereto. It is by the court now here ordered, that the said receiver Edgar C. Chapman, be and he is hereby authorized and empowered as such receiver and for the purposes aforesaid, to wit, for the purpose of paying the expenses and indebtedness already incurred by him in the management of said property, and of paying the continuing and accruing expenses of such management, to borrow the sum of five thousand (\$5,000) dollars to be used by him as such receiver for the purposes aforesaid, and to be accounted for to the court from time to time and to issue his certificate or certificates therefor, payable out of any funds that may come into his hands as such receiver applicable thereto, with interest thereon at such rate as he shall find necessary in order to secure such loan, but not to exceed ten per cent. per annum, and that the certificates so issued shall be and constitute a first and prior lien upon all the property described in the mortgage for the foreclosure of which this action is brought, and if not paid prior thereto, then to be paid out of the proceeds of any sale of said property next after the costs of suit and sale, and before the payment of any other sum on account of said mortgage, or the indebtedness secured thereby; and that the said receiver report to this court from time to time his doings under this order, together with the amount of money which he may have realized thereunder, and his disposition thereof.

Joseph McKenna, Judge.

(Endorsed) Filed February 15, 1895. W. J. Costigan,  
Clerk.

State of California, City and County of San Francisco, ss.:

Edgar C. Chapman, being duly sworn, deposes and says: That he is the receiver who makes the foregoing report and petition; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to such matters as are therein stated on his information or belief, and as to those matters he believes the same to be true.

Edgar C. Chapman.

Subscribed and sworn to before me this 30th day of January, A. D. 1895.

[SEAL] Thos. E. Haven, Notary Public in and for the  
City and County of San Francisco, State of  
California.

Dated this 15th day of February, A. D. 1895.

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### Form No. 180

#### **Order Authorizing Receiver's Certificates for Irrigating Plant**

IN THE CIRCUIT COURT OF THE UNITED STATES, NINTH JUDICIAL  
CIRCUIT, NORTHERN DISTRICT OF CALIFORNIA. No. 11950

Atlantic Trust Company, Plaintiff,

v.

Woodbridge Canal & Irrigation Company et al., Defendants.

#### *Order Authorizing Receiver's Certificates to Issue*

A report having been heretofore made on August 13, 1896, by E. C. Chapman, receiver in the above-entitled cause and duly filed therein, whereon an order was issued by the court, to show cause why the property of the defendant in the above-entitled cause, now in the hands of said receiver, should not be sold and the proceeds thereof applied in satisfaction of the costs and expenses incurred by said receiver in the care and management of said property and the balance thereof be paid into court to abide the final judgment of the court in said

cause and its final order for the distribution thereof, or for such other or different order as to the court shall seem just and proper in the premises; and the hearing upon said order having been continued from time to time at the request of plaintiff; and it appearing from the report so made that receivers' certificates have been heretofore issued in said cause under and by virtue of an order of this court authorizing the same to the extent named in said order, to wit, to the amount of five thousand (\$5,000) dollars, and that other and further funds are necessary, for the payment of expenses necessarily incurred in the management and care of said property and of taxes thereon, and the said plaintiff now consenting thereto. It is by the court now here ordered that the said E. C. Chapman, receiver, be and he is hereby authorized to make and issue receivers' certificates to the further amount of twenty-five hundred (\$2,500) dollars to run for such a period of time as he shall deem necessary and to bear interest at such rate as he shall find necessary in order to raise moneys thereon, not to exceed ten per cent. per annum; such receivers' certificates, together with those already heretofore issued as aforesaid to constitute a first lien on the property of said defendant held by said receiver, payable out of the first moneys received from the sale of said property, and the same or the proceeds thereof to be used by said receiver for the payment of taxes upon said property and of the current and necessary expenses for the management and care thereof.

Joseph McKenna, Judge.

Dated this 19th day of November, 1896.

**Form No. 181****Order Authorizing Receivers' Certificates for Railway  
Conditionally**

UNITED STATES OF AMERICA, THE DISTRICT COURT OF THE  
UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN,  
SOUTHERN DIVISION. IN EQUITY. No. 2442

American Brakeshoe & Foundry Company, Complainant,  
v.

Pere Marquette Railroad Company, Defendant.

This cause came on to be heard upon the petition of the receivers filed herein on May 27, 1912, presenting a financial plan which provides: (1) for the making of improvements and the purchase of new equipment involving the expenditures of not exceeding \$1,700,000; (2) for meeting matured and maturing principal payments aggregating about \$1,800,000 secured by liens on a large amount of equipments necessary to the continuance of railroad operations; (3) for the issue of receivers' certificates to an amount not exceeding \$3,500,000 for the purpose aforesaid, such certificates to be subordinate to the so-called underlying mortgages, to have priority over the junior mortgages, and to be otherwise secured; and (4) for the payment out of earnings of accruing interest on outstanding equipment obligations and on the underlying mortgages.

On the filing of said petition, and on motion of counsel for the receivers, the court made an order for a hearing thereon on May 30, 1912, for service of a copy of said petition and of said order on the trustees of the junior mortgages; and on the solicitors for the respective parties to this cause; and it appears that service as required has been made.

On the said hearing there were present counsel representing respectively, the receivers, the complainant, the defendant, certain underlying securities, certain protective committees representing various junior securities, and the mortgage trustees named in the said order to show cause.

And the court having heard counsel and having duly considered the matters set forth in said petition, and no question having been raised as to the averments of fact contained in said petition, and the court being satisfied that they are correct and that it is in the interest of the public and the creditors and stockholders of the defendant, for the reasons set forth in said petition, that the recommendations of the receivers be adopted.

And counsel for Central Trust Company of New York as trustee of the refunding mortgage of 1905, and counsel for Bankers Trust Company, as trustee of the improvement and refunding general mortgage of March 1, 1911, appearing specially and neither consenting or opposing the granting of the prayer of said petition.

It is ordered, adjudged and decreed as follows:

1. That the receivers be and hereby they are authorized from time to time in their discretion to issue their certificates as hereinafter provided for, to an aggregate amount not exceeding three million five hundred thousand dollars (\$3,500,000) and to use such certificates to the extent of one million seven hundred thousand dollars (\$1,700,000), or the proceeds thereof, in the making of improvements and in the purchase of equipment substantially as set forth in "Exhibit A" attached to said petition, and to use such certificates to the extent of one million eight hundred thousand dollars (\$1,800,000) or the proceeds thereof, in meeting the matured and maturing payments of principal on the equipment obligations now outstanding, enumerated in "Exhibit C" attached to said petition.

2. That said receivers be and hereby they are further authorized from time to time in their discretion to pay out of earnings the interest to mature on the bonds and other obligations issued under and secured by the mortgages and other indentures or agreements enumerated in "Exhibit B" attached to said petition.

3. That said certificates to the aggregate authorized amount of \$3,500,000 be issued in one series, in such denominations as the receivers from time to time may deem proper, all the certificates of said series to be equally and ratably secured as herein provided, without preference or priority one over another; that said certificates contain the printed signatures of the three receivers and be signed in person by at least one of them in behalf of all, or that said certificates be signed personally by all three receivers; that every certificate be countersigned by the register of this court or his deputy; that said certificates be dated as of June 1, 1912, and be made payable on June 1, 1915; that said certificates be redeemable as a whole on any interest date, at the option of the receivers, by the payment of the principal, a premium of one per cent. thereon and the coupons then maturing, provided the receivers, not less than thirty days nor more than sixty days prior to such interest date, shall have caused notice of the election to redeem said certificates to be inserted once in at least two daily papers published in the City of Detroit, and once in at least two daily papers published in the Borough of Manhattan, City of New York; that said certificates bear interest at the rate of five per cent. per annum, payable semiannually December 1, and June 1, both principal and interest to be payable at such place or places as the receivers may determine, to be stated in said certificates, the interest to be represented by coupons bearing the facsimile signatures of the three receivers; that said certificates contain a reference to this order and that this paragraph three be set forth in the body of said certificates; that the receivers incur no personal responsibility by the issue of said certificates; that the said certificates be a lien on all the property of the defendant within the State of Michigan (and if a suitable order shall be made by the United States District Court for the Northern District of Ohio, then also on all property of the defendant within the State of Ohio, and if a suitable order shall be made by the United States District Court for the District of Indiana, then also

on all the property of the defendant within the State of Indiana); that said certificates be subordinate to the respective liens of each and all of the mortgages described in said "Exhibit B" except the mortgage dated January 2, 1901, to Farmers Loan & Trust Company; that said certificates be paramount to the said mortgage dated January 2, 1901, and to the refunding mortgage of 1905, to Central Trust Company of New York, and to the improvement and refunding general mortgage of 1911, to Bankers Trust Company; that said certificates be also a first lien on all the new equipment purchased from time to time by the receivers with the said certificates or the proceeds thereof; that such certificates be also a first lien on the \$650,000 of equipment obligations referred to in said petition, if the same shall be acquired by or for account of the receivers, and through such obligations an ultimate first lien on all the equipment which now directly or indirectly secured such obligations; that said certificates be also a first lien on any other equipment obligations that may be acquired by the receivers representing all or any of the principal payments on equipment hereinbefore authorized to be met; that said certificate be also a general charge on all the receivership funds and all the defendant's property; that the receivers be and hereby they are authorized to enter into an agreement with any trust company for the purpose of aiding in carrying out the foregoing provisions as to the security of said certificates, in which agreement it may be provided that the title to and ownership of all or any of such new equipment and the ownership of all or any of said equipment obligations shall rest in said trust company as trustee for the benefit of each and all of the holders of such certificates and of any future securities, issued in pursuance of any plan of reorganization, for the refunding of such certificates in whole or in part; and that in case of default in the payment of the principal or interest of any of such certificates, a petition may be filed herein for appropriate relief.



That the receivers be and hereby they are authorized from time to time in their discretion to sell or dispose of all or any of such certificates, in furtherance of the execution of this order, or to exchange all or any of the same for the matured or maturing principal equipment notes or obligations aforesaid or any thereof, or to apply the said certificates or any thereof to or towards the payment for any of the improvements herein authorized or the acquisition of any of the equipment, equipment notes or obligations, or any thereof, by which the said certificates are to be secured as aforesaid; that before delivery of any of said certificates the receivers cause the matured coupons thereof, if any, to be detached and cancelled; and that the receivers have authority to apply to the court from time to time for further direction in the premises.

5. This order is without prejudice to the right of the receivers to apply to the court hereafter for authority to pay the interest maturing from time to time upon the refunding mortgage of 1905 to Central Trust Company of New York, and upon the improvement and refunding general mortgage of 1911 to the Bankers Trust Company above referred to, should the earnings of the property in the hands of the receivers be such as in their judgment to justify such payment.

Provided, however, the Farmers Loan & Trust Company, as trustee under said mortgage dated January 2, 1901, having this day appeared specially for the purpose of this application and not otherwise by Frederick Geller, its counsel, and having objected that the service of the notice of this application was insufficient to enable it to communicate with the holders of the bonds secured by said mortgage and to investigate the facts and determine whether it ought to file and insist upon objections to the granting of said application and the issuance of said receivers' certificates or the form of this order in whole or in part. It is ordered that said Farmers Loan & Trust Company as trustee as aforesaid have until June 12, 1912, in which to file an answer to the petition herein and to make objection in such form as it may be advised to

said application in whole or in part and to move to set aside or modify this order with like force and effect as if said order had been filed or said objections made prior to the granting of this order, said answer, a notice of such objections, or a motion to set aside or modify this order to be filed in the office of the clerk of this court. .

Approved for entry May 30, 1912.

Alexis C. Angell, District Judge.

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## Form No. 182

### Application to Renew Receivers' Certificates

A B, Plaintiff,

v.

C D, Defendant.

#### *Application to Renew Receivers' Certificates*

Now comes ———, receiver of ———, and represents to the court that under authority of the order of this court of ——— he did on ——— borrow the sum of ——— dollars and issued his receiver's certificate therefor with six (6%) per cent. interest hereon due and payable in six months from date thereof to sell the same and with the proceeds thereof to pay the aforesaid certificate of ——— now held by the ——— as aforesaid.

———, Receiver,

By ———, His Attorney.

**Form No. 183****Entry Authorizing Renewals of Receivers' Certificates**

A B, Plaintiff,

v.

C D, Defendant.

*Entry Authorizing Issue of Receivers' Certificates in Renewal of Outstanding Certificate* \*

This cause came on to be heard upon the application of \_\_\_\_\_, receiver herein, to issue receivers' certificate in the sum of \_\_\_\_\_ dollars and borrow thereon for the purpose of paying receivers' certificate for like amount dated \_\_\_\_\_ issued under order of this court made \_\_\_\_\_ and held by \_\_\_\_\_.

And the court being fully advised in the premises, finds that it is for the best interest of the estate that the said renewal certificate be issued and it is accordingly ordered that the receiver be authorized and directed to issue his certificate in the sum of \_\_\_\_\_ dollars payable six months after date, drawing interest at the rate of six (6%) per cent. per annum from date and to sell the same at not less than par and out of the proceeds thereof pay \_\_\_\_\_ the principal of said certificate dated \_\_\_\_\_ and he is authorized to pay the interest thereon out of the funds now in his hands.

**Form No. 184****Consent by Mortgagee or Bondholders to Issue of Receivers' Certificates**

A B, Plaintiff,

v.

C D, Defendant.

*Consent by Mortgagee or Bondholder to Issue of Receivers' Certificates*

We, the undersigned holders of bonds issued by the —— company, secured by mortgages or deed of trust from said company to the —— Savings & Trust Company, hereby consent and agree to the order heretofore entered in the above cause and to any orders which may hereafter be entered herein authorizing the receiver herein to borrow money to pay taxes, ground rents due and to become due under the lease from ——, to keep the premises described in the petition described issued, to employ the necessary watchman and to cover other incidental expenses which may be necessary for the preservation of said leasehold or caseholds and we hereby consent that all moneys loaned for such purposes shall be a lien on the perpetual leasehold estate and other premises described in the petition herein prior and preferable to the lien under the mortgage to secure the bonds mentioned in the petition herein, and that from any and all sales made and moneys which may hereafter be on hand for distribution, the amounts borrowed by said receiver for the purposes aforesaid or the certificates which they may have issued therefor, shall be first paid before any distribution is made to any of them as bondholders.

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_.

Dated \_\_\_\_.

**Form No. 185****Receiver's Certificate***Authorized Issue \$——*

No. ——

\$——

This is to certify that for value received ——, as receiver of —— and not individually, are indebted to the bearers hereof in the sum of \$—— payable at the office of said receiver in the City of —— from date hereof in gold coin of the United States of America of the present standard of weight and fineness with interest thereon at the rate of —— per cent. per annum, payable semiannually in gold coin on the —— day of —— and —— upon presentation of this certificate for endorsement thereon of the interest payment.

This certificate is part of an issue of certificates of like amounts, tenor and date, not exceeding in the aggregate the principal sum of \$—— authorized by an order of the —— court dated —— in an action pending in the —— court —— County, State of ——, being numbered —— in which A B is plaintiff and C D is defendant.

This certificate is issued to and is entitled to the benefits and security specified in the aforesaid order subject to all the terms and provisions whereof this certificate is issued and held. This certificate and all rights and liens thereunder shall be transferable by delivery.

In witness whereof the said receiver has, pursuant to the order of the court hereinbefore recited, hereunto subscribed his name this —— day of ——, 19——.

——, Receiver of ——.

**Form No. 186****Petition by Intervenor Objecting to Issue of Receivers'  
Certificates**

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN  
DISTRICT OF OHIO, WESTERN DIVISION. IN EQUITY. No. 41

The Bankers Trust Company, Plaintiff,

v.

The Cincinnati, Hamilton & Dayton Railway Company,  
Defendant.

Now comes Central Trust Company of New York, as trustee under the first mortgage of the Cincinnati, Dayton & Ironton Railroad Company, dated May 1, 1891, and appears herein specially for the sole purpose of objecting to the issue of receivers' certificates as prayed for in the petition of the receivers herein, verified September 10, 1914, or otherwise, and for no other purpose; and said Central Trust Company of New York, as trustee as aforesaid:

1. Denies that it has any knowledge or information as to any of the matter or things set forth in the said petition of the receivers herein, verified September 10, 1914, and leaves the receivers herein to make such proof thereof as they may be advised and able to make;

2. Objects to the issue of any receivers' certificates herein having a lien paramount, superior or prior to the lien of the first mortgage of the Cincinnati, Dayton & Ironton Railroad Company, to said Central Trust Company of New York, as trustee, dated May 1, 1891, as further objects to the entry of any order herein providing for the issue of any such receivers' certificates and to the jurisdiction of the court to make any such order;

3. Alleges that it is not a party to this suit and has not been served with process herein, but that the only notice of the application of the receivers for authority to issue receivers' certificates as prayed for in their petition, verified September 10, 1914, is contained in a letter dated September

12, 1914, from the clerk of this court, received by said Central Trust Company of New York through the mail on September 14, 1914, enclosing a certified copy of said petition and of a certified copy of the order of this court, dated September 10, 1914, providing that said petition should be heard on September 28, 1914, at ten o'clock a. m., or as soon thereafter as counsel can be heard.

Wherefore, said Central Trust Company of New York, as trustee as aforesaid, prays that the said petition of the receivers herein be denied in so far as the same prays leave for authority to issue receivers' certificates herein having a lien paramount, superior or prior to the lien of the first mortgage of the Cincinnati, Dayton & Ironton Railroad Company, dated May 1, 1891.

Central Trust Company of New York, Trustee,

[SEAL]

By E. Francis Hyle, Vice-President.

Joline, Larkin & Rathbone, by Henry V. Poor, Solicitors for Central Trust Company of New York, as Trustee, appearing specially as aforesaid.

Henry V. Poor, of Counsel.

United States of America, Southern District of New York,  
County of New York, ss.:

E. Francis Hyde, being duly sworn, deposes and says that he is an officer, to wit, a vice-president of Central Trust Company of New York, the corporation described in and which executed the foregoing answer to the petition of the receivers herein, certified September 10, 1914, for authority to issue certain receivers' certificates; that he has read the foregoing answer and knows the contents thereof, and that the same is true, to the best of his knowledge and belief.

E. Francis Hyde.

Subscribed and sworn to before me this twenty-fourth day of September, 1914.

[SEAL]

Francis L. Maddin, Notary Public, Westchester  
County Certificate filed in New York County,  
County Clerk's No. 60.

## FORMS IN APPEALS FROM APPOINTMENT OF RECEIVER

**Form No. 187****Petition for Appeal from Final Decree and Appointment  
of Receiver**

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO,  
WESTERN DIVISION. IN EQUITY. No. 21

Frances H. Williamson, Plaintiff,

v.

Justus Collins, Eugene Zimmerman, George R. Collins and  
The Superior Portland Cement Company, a Corporation,  
Defendants.

The above named defendants, Justus Collins, Eugene Zimmerman, George R. Collins and the Superior Portland Cement Company, a corporation, conceiving themselves aggrieved by the decree made and entered on December 18, 1913, in the above entitled cause, do hereby appeal from said order and decree to the United States Circuit Court of Appeals for the Sixth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and does pray that this appeal be allowed upon their giving bond in the sum of one thousand dollars, and that a printed transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, be sent to the United States Circuit Court of Appeals for the Sixth Circuit.

———, Solicitor for Defendants.



**Form No. 188****Assignment of Errors**

And now on February 3, 1914, come the above named defendants, Justus Collins, Eugene Zimmerman, George R. Collins and the Superior Portland Cement Company, a corporation, and say that the decree made and entered herein on December 18, 1913, is erroneous and unjust to the defendants for the following reasons:

1. Because the court erred in holding that the deed of assignment dated, October 31, 1913, from the Portland Cement Company, by Eugene Zimmerman, its vice-president, and George R. Daniels, its secretary, to the defendant Justus Collins and by him filed in the Insolvency Court of Hamilton County, Ohio, and recorded in the recorder's office of Lawrence County and Scioto County was not and is not the lawful or valid deed of said company and declaring the same null and void.

2. Because the court erred in holding that said deed of assignment should be set aside and ordering the same cancelled by the defendants, Justus Collins and Eugene Zimmerman.

3. Because the court erred in ordering the defendant, Justus Collins, to execute a deed in due form of law reconveying to the defendant, the Superior Portland Cement Company, all of the property and assets mentioned in or covered by said invalid deed of assignment.

4. Because the court erred in permanently enjoining Justus Collins from acting as assignee under said deed of assignment.

5. Because the court erred in permanently enjoining the officers, agents, attorneys and employes of the Portland Cement Company from recognizing said Justus Collins as assignee or permitting him to act under said deed of assignment.

6. Because the court erred in ordering said Justus Collins to file a complete account of his doings under said deed of assignment,

7. Because the court erred in ordering the said Justus Collins and Eugene Zimmerman to pay the costs of the proceedings including services for taking testimony in said case.

8. Because the court erred in appointing Guy W. Mallon, receiver of all and singular the assets of the defendant, the Portland Cement Company, to operate the business of said company and to preserve its assets until the further order of the court; and in further ordering that upon the receiver giving bond in the sum of \$10,000 and qualifying as receiver, the defendants, Justus Collins and the Superior Portland Cement Company, its officers, agents, attorneys, and employes, should turn over to said receiver all and singular the assets of the company, including its books of account, stock and minute books, and in enjoining all persons from interference with the possession and custody of said receiver.

9. Because the court erred in overruling the objections made by Justus Collins and others to the jurisdiction of the court.

10. Because the decree holding said deed of assignment to be invalid and cancelling the same; ordering the defendant, Justus Collins, to reconvey to the Superior Portland Cement Company all of the property and assets mentioned in, or covered by said deed of assignment; enjoining said Justus Collins from acting as assignee under said deed of assignment and enjoining the officers, agents, attorneys and employes of said the Superior Portland Cement Company from recognizing said Justus Collins as assignee; ordering said Justus Collins to file a complete account of his actions under said deed of assignment; assessing the costs of said proceedings including all costs against said Justus Collins and Eugene Zimmerman; and appointing Guy W. Mallon, receiver of all and singular the Portland Cement Company, to operate the business of the company; is erroneous in that it is contrary to the evidence in the case.

11. Because the decree referred to in assignment No. 13 is erroneous in that it is against the evidence in said case.

12. Because the decree referred to in assignment No. 13 is erroneous in that it is without sufficient evidence to support the same.

13. Because the equity of the case was with the defendants.

14. Because it appears from the record in this case that plaintiff was not entitled to an injunction or the appointment of a receiver and that the decree entered granting such and other relief to plaintiff is erroneous and against the just rights of the defendants, and the application of plaintiff should have been refused and his bill of complaint dismissed.

The defendants above named further complain that the court below erred.

15. Because the court erred in ordering said receiver to borrow money and reduce salaries.

16. Because the court erred in ordering the receiver to pay salaries.

17. Because the court erred in granting the application of the receiver.

(a) To defend actions against and to prosecute actions for the Portland Cement Company.

(b) To make necessary repairs to the mill not to exceed \$10,000.

(c) To employ three salesmen.

(d) To erect a clinker platform and conveyer.

(e) To announce to former customers and the trade that said receiver will conduct the business of the Portland Cement Company during the year 1914.

(f) To enter into contracts and to extend credit to purchasers in accordance with the former custom of the business and the exigencies of the trade in general.

(g) To manufacture and to seek business, both from old customers and new customers and in general to operate the business of the Portland Cement Company.

(h) To make payment of salaries and wages of employes, to pay for needed materials and supplies; to settle accounts incurred in the operation of the company; and to make pay-

ment of all expenses incurred in the operation of said business out of any funds coming into his hands as receiver.

Wherefore the said Justus Collins, Eugene Zimmerman, George R. Collins, and the Superior Portland Cement Company pray that the said decree and orders be reversed, and that said District Court of the United States for the Southern District of Ohio, may be directed to enter a proper decree in said cause according to the evidence and according to the equity of the case.

Ireton & Schoenle, John E. Bruce, Rufus B. Smith,  
Solicitors for Defendants.

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## **Form No. 189**

### **Order Allowing Appeal**

(Entered by Judge Sater, February 3, 1914)

This day came the defendants, Justus Collins, Eugene Zimmerman, George R. Collins, and the Superior Portland Cement Company and presented their petition for the allowance of an appeal to the United States Circuit Court of Appeals for the Sixth Circuit, and an assignment of errors, accompanying the same, which petition for an appeal upon consideration by the court is hereby allowed upon the filing of a bond in the sum of one thousand dollars (\$1,000) with good and sufficient security to be approved by the court.

**Form No. 190****Bond on Appeal**

(Filed February 3, 1914)

Know all men by these presents, that we, Justus Collins, Eugene Zimmerman, George R. Collins, the Superior Portland Cement Company, a corporation, as principal, and the American Surety Company of New York, as sureties, are held and firmly bound unto Frances H. Williamson, in the full and just sum of one thousand (\$1,000) dollars, to be paid to the said Frances H. Williamson, her certain attorneys, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 3d day of February, in the year of our Lord one thousand nine hundred and fourteen (1914).

Whereas, lately at a District Court of the United States for the Southern District of Ohio, Western Division, in a suit depending in said court, between Frances H. Williamson, complainant, and Justus Collins, Eugene Zimmerman, George R. Collins and the Superior Portland Cement Company, defendants, a decree was rendered against the said Justus Collins, Eugene Zimmerman, George R. Collins and the Superior Portland Cement Company and the said Justus Collins, Eugene Zimmerman, George R. Collins and the Superior Portland Cement Company have filed their petition for appeal and assignment of errors in the clerk's office of the said court to reverse the decree in the aforesaid suit, and having obtained a citation directed to the said Frances H. Williamson citing and admonishing her to be and appear at a session of the United States Court of Appeals for the Sixth Circuit, to be holden at the City of Cincinnati, in said circuit, on March 5 next.

Now, the condition of the above obligation is such, that if the said Justus Collins, Eugene Zimmerman, George R. Collins and the Superior Portland Cement Company shall prosecute

their appeal to effect, and answer all damages and cost if they fail to make said plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of

[SEAL] Justus Collins,

[SEAL] Eugene Zimmerman,

By John E. Bruce, his Attorney.

[SEAL] George R. Collins,

By Ireton & Schoenle, his Attorneys.

[SEAL] The Superior Portland Cement Company,

By Ireton & Schoenle, its Attorneys.

[SEAL] American Surety Company of New York,

By Fred J. Kinsey, Resident Vice-President.

Attest: Charles F. Williams, Resident Asst. Secy.

Approved by J. E. Sater, Judge.

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## Form No. 191

### Citation

(Filed February 5, 1914)

### UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

United States of America, Sixth Judicial Circuit, ss.:

#### *To Frances H. Williamson Greeting:*

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be holden at the City of Cincinnati, in said circuit, within thirty days from the date hereof, pursuant to an appeal, filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, wherein Justus Collins, Eugene Zimmerman, George R. Collins and the Superior Portland Cement Company, a corporation, are appellants and you are appellee, to show cause, if any there be,

why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 3d day of February, in the year of our Lord one thousand nine hundred and fourteen (1914), and of the Independence of the United States of America the one hundred and thirty-eighth.

J. E. Sater, Judge of the District Court of the United States for the Southern District of Ohio.

State of Ohio, County of Hamilton, ss.:

On this 4th day of February, A. D. 1914, personally appeared before me, a notary public in and for said county, Louis A. Ireton, and made oath that he delivered a copy of within citation to Murray Seasingood, counsel of record for Frances H. Williamson in the case of Frances H. Williamson v. Justus Collins et al., No. 21. In equity. The United States District Court, Southern District of Ohio, Western Division.

Louis A. Ireton.

Sworn to and subscribed before me this 4th day of February, 1914.

[SEAL] Morgan Van Matre, Notary Public, Hamilton County, Ohio.

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